



BOARD OF ADJUSTMENT AND APPEALS AGENDA

Thursday, December 6, 2012

6:30 p.m.

Coon Rapids City Center

Council Chambers

Call to Order

Roll Call

Adopt Agenda

Approval of Minutes from Previous Meeting

New Business

1. Appeal of Hearing Examiner Decision, Case 12-44V, Scott Nellis, 10320 Grouse St

Other Business

Adjourn



Board of Adjustment and Appeals - Regular Session

Meeting Date: 12/06/2012

SUBJECT: Approval of Minutes from Previous Meeting

Attachments

November 1, 2012 Minutes

COON RAPIDS BOARD OF ADJUSTMENT AND APPEALS MEETING MINUTES OF NOVEMBER 1, 2012

The regular meeting of the Coon Rapids Board of Adjustment and Appeals was called to order by Chairman Wessling at 6:30 p.m. on Thursday, November 1, 2012, in the Council Chambers.

Members Present: Chairman Gary Wessling, Commissioners Jeanette Rosand, Teri Spano-Madden and Trish Thorup

Members Absent: Commissioner Vande Linde

Staff Present: Housing and Zoning Coordinator Cheryl Bennett, Assistant City Attorney Melissa Westervelt, Neighborhood Coordinator Kristen DeGrande and Coon Rapids Police Officer Coffee

CALL TO ORDER

Chairman Wessling called the meeting to order at 6:30 p.m.

APPROVAL OF THE AUGUST 2, 2012, MEETING MINUTES

Commissioner Thorup requested the following corrections:

Page 2, third paragraph: "...as they worked to prepare the house..."

Page 4, seventh paragraph: "Ms. ~~Malone~~Melloy stated that the cost for removing..."

Page 5, fourth paragraph: "...comparison to Ms. ~~Malone's~~Melloy's pictures..."

Commissioner Rosand requested the following corrections:

Page 5, first paragraph: "...e-mail confirming that the property was ~~complaint~~compliant is..."

Page 11, first paragraph: "...was not able to go to the DMV until ~~the~~ June 9."

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER ROSAND, TO APPROVE THE AUGUST 2, 2012, MEETING MINUTES AS AMENDED. THE MOTION PASSED UNANIMOUSLY.

Assistant City Attorney Westervelt reviewed guidelines for the meeting in which the Board will hear objections to miscellaneous assessments. She reviewed that after hearing an objection the Board will make recommendation to City Council to either affirm, rescind or modify the assessment. She explained the process will be that the Board first hears from staff followed by the petitioner. She explained that the Board would discuss the matter and make a decision. She noted that this meeting addresses objections to a special assessment and is not to appeal the underlying citation. She stated that the Board has read the written objections submitted and therefore the property owner's presentation to the Board will be limited to five minutes. She asked that comments be directed to the Chairman and that petitioners step up to the podium to be heard.

Chairman Wessling reviewed the agenda to determine the petitioners present. He announced cases will be heard first for those present.

1. CASE 12-30V – TIFFANY BRESKE – 10748 FLORA STREET – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 4)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande summarized that there are two citations for long grass. She explained that in June and August the property was posted for long grass. She explained that the property owner was compliant and mowed before each deadline. She explained that there is a \$150 penalty for the second posting during the same season.

Chairman Wessling confirmed that there is no objection to the original citations on file. He reviewed that there was long grass, which was mowed. He stated that the second citation was for weeds. He asked if the weeds were growing at the time of the inspection for the first citation and if the weeds should have been included in the first citation. Neighborhood Coordinator DeGrande stated that she is going off the inspector's report, which does not identify whether the weeds were there at the time of the first citation.

Tiffany Breske of 10748 Flora Street, explained that her complaint does not involve the first citation. She noted that her written objection does not relate to that citation. She added that her September 28th assessment notice did not mention it being a second violation during a growing season. She explained that only the September 5 date is mentioned which is why her objection only references this date. She stated that she is present to clarify this. She acknowledged that the first citation was for long grass, which she mowed. She reviewed that the second citation was for buckthorn, which she also addressed. She commented that she was not aware that this plant was a weed. She explained that she moved into the home at the beginning of March. She commented that she believes there are two issues.

Chairman Wessling asked if the weeds were there from the spring. Ms. Breske commented that the plant was there when she purchased the home. She believed it was a berry bush and explained that she was unaware of what buckthorn was prior to calling the city for clarification.

Chairman Wessling stated that buckthorn likely was growing when the first citation was issued. He explained that if this was noted on the first citation, the second citation would have not been issued. He added that the property owner acted to address the first citation.

The consensus of the Commission was that the weed was likely there at the time of the first citation and can be hard to identify as a weed.

Chairman Wessling suggested removing the \$150 penalty.

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER THORUP, IN CASE 12-30V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL RESCIND THE \$150 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

2. CASE 12-31V – RICHARD PFIFFNER – 10960 FOLEY BOULEVARD – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 5)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande reviewed that this issue results from a series of citations for expired vehicle tabs and an excessive use charge from activity last fall.

Chairman Wessling confirmed that the vehicle registration is currently in compliance. Neighborhood Coordinator DeGrande confirmed that as of August 1 the tabs are in compliance, resulting in a charge of half the amount for the last administrative citation.

Chairman Wessling confirmed that no objection is on file for the underlying citations. Neighborhood Coordinator DeGrande confirmed that there had not been communication from the property owner prior to administration of the assessment.

Richard Pfiffner, 2221 Boxwood Ave, St. Paul, Minnesota, stated that he first received notice when the assessment was issued. He noted that he took care of it as soon as he became aware. He reported coming to the city offices to speak with the assessor. He stated that he understood his address to be the same as on the rental license. He reported that the assessor explained that the address of record is obtained from county records and that it can only be updated at the county offices. He explained that the notices were sent to the renter at the property. He noted that he has changed his address information with the county. He stated that he finds out directly about any issues with a water bill.

Heather Honeycutt-Wyne, 10960 Foley Boulevard, explained she is the tenant and owns the van, which was missing tabs. She reported she had not received a notice either. She reported that while she was obtaining her marriage license, she asked whether tabs were needed for a vehicle that is not running and was told by that office it was not necessary.

Mr. Pfiffner commented that Housing Inspector Michelle Posch was at the property a few months earlier to update his rental license.

Ms. Honeycutt-Wyne commented that neither one of them received notification regarding anything. She asked what posting means. Neighborhood Coordinator DeGrande reviewed that long grass violations are posted on the property. She commented that the violation is sent to the occupant of the house and to the taxpayer of record. She confirmed that it is sent according to the address on file with Anoka County for tax records.

Ms. Honeycutt-Wyne reviewed that she was collecting mail for the property owner that was addressed to Mr. Pfiffner. She confirmed she held the mail for a long time.

Chairman Wessling inquired about forwarding mail. Ms. Honeycutt-Wyne initially stated that she did not have the forwarding address, but then agreed the address was on the rental license.

Commissioner Rosand asked whether the rental license is current. Neighborhood Coordinator DeGrande confirmed that it is current.

Chairman Wessling asked about the address on file. Mr. Pfiffner reported that his address was not updated at the county, which he has followed through on and updated at this point. He commented that the city inspector had been at the property.

Commissioner Rosand reviewed that the rental license agreement should note that a change is needed on the county property records. She suggested that a property owner may expect that if one department has an address, it is shared with another. She suggested that a property owner should expect their tenant to forward information in a timely manner. Commissioner Thorup commented that three communications were sent within 30 days.

Chairman Wessling stated that this is an issue between the tenant and the property owner.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER ROSAND, IN CASE 12-31V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$1,650 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

3. CASE 12-33V – ALEKSANDR AND ERIKA PERZHU – 12362 THRUSH STREET – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 7)

Chairman Wessling reviewed the background on the case. Neighborhood Coordinator DeGrande reviewed that this charge is for long grass. She reported that part of the grass had been cut on reinspection. She explained that upon arrival the next day by the contractor the entire yard had been cut but it was not cut by the time it was reinspected.

Chairman Wessling asked whether an objection was filed by the property owner. Neighborhood Coordinator DeGrande reviewed that one was not filed.

Erika Perzhu, 12362 Thrush Street, stated that an objection was filed. She explained that her husband has handed the citation and she is not sure if he was aware of instructions on the citation. She commented that she typically does paperwork for her husband and she was unaware to file an appeal. Neighborhood Coordinator DeGrande stated that directions are attached.

Housing and Zoning Coordinator Bennett commented that objections to citations come through her office and that none was received in this case.

Ms. Perzhu noted that they had been in Washington for two weeks and when they came home, it was very rainy. She reported that the only day her husband can mow, due to his work schedule, is Saturday. She explained that it was raining so they were unable to complete the backyard mowing the same day. She stated they have not received a previous citation. She reported that her husband stated to her that the inspector measured the grass under the pine trees. She added that this is an area that is not mowed as it is under trees. Chairman Wessling commented that the inspector's picture does not show pine trees.

Commissioner Rosand asked if the reinspection schedules are adjusted during a week with a lot of rain. Neighborhood Coordinator DeGrande commented that when the property is posted seven days are given and reinspection occurs on the eighth day. She noted that a call can be made to the city to ask for an extension. Instructions would be given to fill out the form.

Ms. Perzhu commented that the citation does not notify them that a call can be made but only refers to writing a letter. She added that they would have called if it was in the instructions. She commented that it takes three days for mail to be received and it would have been late. She explained that they completed the yard later in the day after the inspector came.

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-33V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$300 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

4. CASE 12-36V – JACOB AND LINDSEY MCCARTY – 10360 TAMARACK STREET – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 10)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande stated the citation is for long grass. She reviewed that the inspectors were at the property in August and on reinspection found the grass had not been cut. The mowing crew cut the grass at the property.

Jacob McCarty, 10360 Tamarack Street, stated that his letter to the city was written with the misunderstanding that the citation concerned the area surrounding the meter. He commented that he leaves the grass long by his meter to train his hunting dog but that the area in front of the house is maintained. He stated that he misunderstood the notice. He expressed concern about the contractor's time listed on the photos and asked if the time taken to mow defines the fee. He noted that the time stamp on the photo shows the mowing end time is earlier than the start time of the mowing. Neighborhood Coordinator DeGrande indicated that the charge is the same regardless of the amount of time taken to mow by the contractor.

Chairman Wessling reviewed that the notification is clear and if there was a misunderstanding staff should have been contacted. He explained that only part of the mowing was completed prior to reinspection.

Commissioner Spano-Madden stated that she understood what the homeowner was doing but that it is not allowed. She suggested the homeowner contact staff.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER ROSAND, IN CASE 12-36V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$300 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

5. CASE 12-38V – JON H. BADEN – 10261 PALM STREET – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 12)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande stated that a variety of citations were issued for expired tabs, parking off pavement, an inoperable vehicle and illegal exterior storage of items. She reviewed that second and third citations were issued when these items were not addressed. She added that at the end of August, the property was found to be compliant.

Chairman Wessling confirmed that the citations were mailed to the property owner. Neighborhood Coordinator DeGrande confirmed that the letters were mailed to the property owner. She stated that the mailing address was not an issue.

Housing and Zoning Coordinator Bennett referred the Board to the staff recommendation to reduce the amount of the pending assessment from \$2,100 to \$1,800.

Commissioner Rosand referred to the second paragraph in the background under considerations and asked about why the citation was not issued following the inspection on July 13 to investigate conditions. She also commented about the property owner contacting the inspector on August 7 and the reinspection being rescheduled for August 20th. Neighborhood Coordinator DeGrande stated that on July 13 staff wanted to be sure the client did not have the items only on the property for a day from cleaning the garage or some other specific activity. She stated that is why staff returned to the property and, upon finding the items remaining, and issued the citation. She explained that often when the inspector goes to the property, the homeowner is not outside, which would give staff the opportunity to discuss the reinspection date. Commissioner Rosand requested confirmation that there is opportunity for a property owner to discuss a reinspection date and to request that it be pushed back, when they make contact with the city. This was confirmed by staff.

Jon Baden, 10261 Palm Street, stated that he wrote a letter to complain about the process and that he objects to the fee as he was in compliance by August 28. He added that his property is up to code. He reported that he has been parking off pavement in this location for 34 years.

Chairman Wessling confirmed the property owner received three separate citations.

Mr. Baden commented that after the first citation he called and spoke to Drew Ingvalson. He explained that due to his age it would take a lot of time to complete the removal of the items. He stated that some of the items noted were part of a miniature golf course that he set up with his grandchildren and that it has now been taken down and removed. He added that all items were addressed but it took more time to get the classic automobile into his garage as it was not operable.

Chairman Wessling confirmed that the property owner spoke to the city throughout receiving the three citations.

Commissioner Rosand inquired about an agreement to have everything done by August 20 but the property owner is stating the date of compliance was August 28. Mr. Baden stated that the second letter shows a date of August 28, which is when everything was completed.

Chairman Wessling asked about the timeline. Housing and Zoning Coordinator Bennett reviewed that the compliance with the initial citation was not met which is why a second citation was issued. She noted that once compliance is not met, the fine is imposed and the fine of any subsequent citation is doubled. She stated that upon compliance with an initial citation, the fine is waived and upon compliance with a second or subsequent citation, that fine is halved but that any previous fines in the matter stand.

Chairman Wessling reviewed the citation timeline of July 13 for the first inspection of expired tabs. He asked whether the reinspection occurred on July 19, and if the citation had not been taken care of.

Neighborhood Coordinator DeGrande reviewed that the inspector first visited the property on July 13 and then came back on July 19 to see if he had observed items in a temporary state. At this second visit, the initial citation was issued for code violations including expired tabs, parking off pavement and removal of the items in exterior storage.

Chairman Wessling confirmed that on the July 13 the inspector drove by and did not issue a citation. He reviewed that on July 19, the inspector went by the property again and issued a citation at that time. He inquired about the fines at this point. Neighborhood Coordinator DeGrande reviewed that in the packet the three violations are detailed for \$300 each.

Chairman Wessling confirmed a citation was issued on the July 19 with a compliance date of July 26. He noted that upon reinspection on the July 27 the items were not cleaned up so the inspector issued a citation. He reviewed that the property owner contacted staff on August 7 resulting in an agreement of an August 20 reinspection date. He asked when the second \$600 assessments were applied. Neighborhood Coordination DeGrande stated that on August 21 the second citation was given. This was the day after the reinspection date that was agreed upon with the property owner. She noted this citation regards four violations, one of which is recommended for a reduction.

Chairman Wessling stated that the August 28 was the date the inspector expected compliance and that the inspector found the property to be in compliance. He inquired about the total.

Neighborhood Coordinator DeGrande reviewed that the \$900 is assessed as the property was not in compliance. She reviewed that the second citation with the August 28 compliance date found the property in compliance. This resulted in only half of that fine being charged.

Housing and Zoning Coordinator Bennett clarified that the violation regarding the boat issued on August 21 was an initial citation and should have carried a penalty of \$300 only. She noted that because compliance was achieved with the initial citation for this offense, none of the penalty was charged.

Chairman Wessling reviewed that the total is \$1,800. He reviewed that from August 7, the property owner was attempting to work with staff but that it took him until August 28 to come into compliance. He questioned charging a penalty for a car parked in the same location for more than 30 years.

Commissioner Rosand reviewed that the penalties from the first citation on July 19 are applied, as the property was not brought into compliance. She noted that those include three assessments for \$300 each. She stated that July 26 was the date for compliance of the first citation and upon reinspection on July 27, no change was found. She reviewed that the property owner contacted the inspector on August 7. She stated that this contact was made after the first compliance date.

Commissioner Spano-Madden reviewed that August 20 was the agreed upon compliance date but that the property was not in compliance until August 28, a week later.

Chairman Wessling asked for a motion recommending a \$900 assessment, as the first three citations were not in compliance. Commissioner Rosand stated that staff has spent a lot of time on this property.

Chairman Wessling commented that a city grew up around this property owner and changes have been made over time. He stated that \$900 would be fair.

Mr. Baden stated that he finds \$900 to be exorbitant as there has been no cost to the city.

Commissioner Rosand added that she supports the \$1,800 assessment. She reviewed that the first three penalties of the second citation were cut in half and the fourth penalty was eliminated.

Chairman Wessling stated that upon inspection, cars, including collector cars, with expired tabs were found. He stated that all of the violations were itemized which adds up to a large fine.

Commissioner Rosand noted that a vehicle had not had tabs since 2000. She stated that in other cases, the Board has determined that property owners are responsible to know the City's requirements. She requested that the Board be consistent in their decisions.

Chairman Wessling added that he would like the citations combined instead of itemizing them when several items are found.

Commissioner Spano-Madden stated she would be willing to reduce the second assessment and bringing the total down to \$1,200.

MOTION BY COMMISSIONER SPANO-MADDEN, SECOND BY COMMISSIONER THORUP, IN CASE 12-38V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL REDUCE THE SPECIAL ASSESSMENT FROM \$2,100 TO \$1,200.

THE MOTION PASSED UNANIMOUSLY.

6. CASE 12-40V – LISA AND GAMAL METWALY – 341 104TH LANE NW – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 14)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande reviewed that the \$300 special assessment is regarding an expired rental license. She noted that it is due for renewal annually on April 1. She commented that on January 26 the reminder letter was sent out. She noted that there was no response from the property owner. This resulted in a July 10 administrative citation giving a compliance date of July 24. She reviewed that they did not have a response until after the second citation was sent out. She reviewed that at this point the property was brought into compliance. The rental license is current.

Lisa Metwaly, 7275 130th Street North, Apple Valley, advised she is the property owner for 341 104th Lane NW. She suggested that this is a misunderstanding in that they have paid bills previously when notification was received. She added that their mail may have been misdirected in their Apple Valley neighborhood where one neighboring property is a rental and another vacant. She commented that could be the reason they did not receive the notification. She stated that they always pay their bills on time and have excellent credit. She added that they stay current on city requirements and have taken the rental classes. She stated that they have never had a legal issue before. She commented that when they received the notice for the \$300 fee, she sent a payment and dated the envelope July 13. She noted that the check was not cashed until August 16, which is when the second notice was received. She stated that Michelle Posch reported to her that the city was understaffed and there could have been an oversight.

Chairman Wessling asked about the rental license fee amount. Ms. Metwaly reviewed that it is \$100, which was paid immediately on July 13 and the check cashed on August 16. She agreed that the check was not dated and acknowledged that she has no explanation for this.

Chairman Wessling confirmed the compliance date. Ms. Metwaly reviewed that their renewal date was April 1. She added that in previous years their records show they paid about two months ahead of time. She added that they have credit records that indicate they are always very timely on payments.

Mr. Metwaly added that he is a first generation American. He commented that a license amount of \$100 resulting in a late fee of \$300 seems excessive. He suggested that the fee should relate to the license amount.

Commissioner Rosand asked if the correct address for the property owner was used. Neighborhood Coordinator DeGrande confirmed that it was. She stated that the mail was not returned, as it would have been noted. She reviewed the renewal notice was sent in January. She commented that on July 10, the first citation was sent and on July 30, a second citation was sent as they had not heard from the property owner.

Chairman Wessling reviewed that the property owner had a history since 2009 of being billed in January. Ms. Metwaly stated that they did not receive notice. She suggested that the mail was misdirected to a neighbor's property, one of which was in foreclosure and another vacant. She

commented that they often receive other neighbors' mail. She added that records should show they are typically early with their payments.

Chair Wessling asked if there is support to rescind the recommendation.

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-40V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL RESCIND THE SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

Housing and Zoning Coordinator Bennett clarified that this is a recommendation to Council that will be considered on November 20, and that the assessment has not been officially rescinded by the action taken tonight.

7. CASE 12-43V – DENNIS M. HILL – 10861 KUMQUAT STREET – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 17)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande stated the charges are for a first offense for parking off pavement and for half of the second administrative citation fine as the property come into compliance.

Chairman Wessling requested confirmation that no correspondence was received after the first citation. Neighborhood Coordinator DeGrande confirmed that no communication was received after the first citation.

Dennis Hill, 10861 Kumquat Street, stated he has a printout from Anoka County called Residential Guidelines to Community Standards and Ordinances. He quoted that it states that two vehicles per dwelling may be parked on the side or rear yard off the driveway at least five feet from the property line. He mentioned that it must be maintained in a neat and orderly manner and maintained with mowing. He reviewed that this is for Anoka County. Chairman Wessling stated that each city within the county has separate ordinances.

Mr. Hill stated that they are still in Anoka County and that this does not make sense.

Neighborhood Coordinator DeGrande confirmed that the property is in compliance.

Chairman Wessling asked why it took two notices to come into compliance. Mr. Hill replied that he moved one of the vehicles from the garage to work on it and that the work took a few days longer than expected.

Chairman Wessling reviewed the timeline with staff. He confirmed the first citation was on June 28 and the compliance date was not met. He noted that on July 17 the property was reinspected. Neighborhood Coordinator DeGrande reviewed that the property was in compliance on July 23 upon reinspection for parking off pavement.

Chairman Wessling explained that communicating with staff would be helpful and would avoid these situations. Commissioner Thorup reviewed that the new citation format includes the staff phone number.

Chairman Wessling asked whether the charges have been reduced to \$300 from the second inspection on July 9. Housing and Zoning Coordinator Bennett reviewed that the first citation penalty stands, but that the second citation penalty amount is reduced by half if the property owner complies.

Neighborhood Coordinator DeGrande confirmed that both citations were regarding one vehicle, not two.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-43V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$600 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

8. CASE 12-28V – NHIA YANG AND CHAO XIONG – 211 110TH AVENUE NW – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 2)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande reviewed that the special assessments are for expired tabs for two vehicles. She reviewed that upon reinspection only one of these vehicles was at the property and that the vehicle was not in compliance. She reviewed that upon inspection after the second citation, neither vehicle was at the property so the property was considered to be in compliance.

Nhia Yang, 211 110th Avenue NW, noted that upon receiving the first notice for expired tabs on two vehicles, they purchased tabs for one cited car and also for a another car, a third vehicle not included on the citation. She stated this vehicle also had a license plate starting with an N, which led to their confusion. She commented that with the second notice they misunderstood and thought it was a first notice for the third vehicle. She stated that upon receipt of both notices they purchased tabs the next day. She reviewed that in the appeal letter they wrote about the three separate cars. She commented that the property report makes reference to the car being removed from the property on reinspection on August 29. She noted that the vehicle had not been moved and asked if the inspector actually visited the property that day. She explained that if they had identified the Honda Civic as being the vehicle referenced in the first citation, they would have taken care of the tabs then.

Chairman Wessling confirmed that three vehicles had expired license tabs. Ms. Yang agreed that they did not stay current on three vehicles and apologized. She asked that the fees be waived, as there was a misunderstanding. She showed a receipt from August 13 that indicated tabs were bought at that time after receiving the first notice.

Commissioner Rosand confirmed that Ms. Yang purchased tabs for two vehicles but that only one of those two vehicles was listed on the citation.

Commissioner Spano-Madden reviewed that the effort to follow the letter of the law was applied but the spirit of the law was not met. She stated that all vehicles should have had current license tabs.

Commissioner Thorup stated that a call could have been made to staff. Ms. Yang stated that she did not know to call because they thought they were addressing the issue with purchasing tabs for two vehicles, but that one of them was not on the citation.

Commissioner Rosand confirmed that the tabs expired in November 2011 for one vehicle.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER ROSAND, IN CASE 12-28V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$600 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

9. CASE 12-42V – NEIL FLEAHMAN – 2137 109TH AVENUE NW – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 16)

Chairman Wessling reviewed the background on the case. He asked for staff comment. Neighborhood Coordinator DeGrande reviewed that the case is regarding expired tabs. She reviewed that in June the first citation was issued. She reviewed that the compliance date was not met so a second citation was issued. She reviewed that upon reinspection the vehicle was in compliance so that fine was cut in half. She reviewed that a \$150 excessive use charge was for citations issued last fall.

Niel Fleahman, 2137 109th Avenue NW, stated that he did not receive the first citation and that upon receiving the second citation, he complied.

Chairman Wessling noted the June 21 citation was not received by Mr. Fleahman. He confirmed that the second citation from July 2 was received and asked Mr. Fleahman how he received it. Mr. Fleahman stated that he found the citation lying on the counter. He explained that he is not sure how his roommate had handled his mail.

Commissioner Rosand commented that staff has not reported an issue with delivery of the first citation. She supported upholding staff recommendation to be consistent.

Mr. Fleahman asked how citations are initiated for any property owner. He referred to citations in general, such as long grass and expired tabs. He asked how the \$300 fine is determined.

Chairman Wessling explained that they are expected to uphold the law.

Mr. Fleahman complained that the Board was not understanding and suggested that he does not fit with the Board's "cookie-cutter world." Chair Wessling stated that is not true and this was not the place for that discussion.

Mr. Fleahman complained that he is being charged \$600. Officer Coffee stated that it is time for Mr. Fleahman to leave the meeting.

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-42V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$750 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

Chairman Wessling recessed the meeting at 8:35 p.m.

Chairman Wessling reconvened the meeting at 8:45 p.m.

10. CASE 12-27V – MARY KAY SMITH – 356 108TH AVENUE NW – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 1)

Chairman Wessling asked staff to review the background on the case. He confirmed that Ms. Smith is not present. Neighborhood Coordinator DeGrande reviewed that the charge is for long grass. She explained that two citations were issued and on reinspection, the property had been mowed. She explained that two citations were issued to the property in the same growing season so half of the penalty of the later citation was charged.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER ROSAND, IN CASE 12-27V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$150 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

11. CASE 12-29V – JENNIFER GORDON – 12140 ZEA CIRCLE – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 3)

Chairman Wessling asked for staff comment. Neighborhood Coordinator DeGrande reviewed that the violation involved a large construction dumpster and that the property was monitored for many months and no construction or remodeling activity was noted. She explained that three administrative citations were issued for the dumpster. She noted that the dumpster was not removed until July 17, bringing the property into compliance.

Commissioner Spano-Madden asked how long a dumpster can be on the property. Neighborhood Coordinator DeGrande stated that a building permit must be issued. She reviewed that the dumpster contained household items and not construction items.

Chairman Wessling noted that the property owner wrote that she only received one notice and then moved the container.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-29V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$900 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

12. CASE 12-32V– MATTHEW CROWDER – 2079 111TH LANE NW – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 6)

Chairman Wessling asked for staff comment. Neighborhood Coordinator DeGrande reviewed that the first citation for \$300 was for expired tabs followed by a second citation. She noted that on reinspection the vehicle was compliant so only half of the second charge was applied. She commented that they sent the notice to the address on file in California. She noted that if they know it to be a rental or believe it is a rental they send notice to the property. She added that the vehicle was removed.

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-32V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$600 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

13. CASE 12-34V – FERID HASIC – 422 84TH LANE NW – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 8)

Chairman Wessling asked for staff comment. Neighborhood Coordinator DeGrande reviewed from her memo that the property owner called to say he was moving on August 29. She noted that police were called because the overhead garage door was open and unsecured. It is standard for police to monitor for this. She reviewed that they sent a letter to the property owner to make them aware that action was taken to secure the property.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER ROSAND, IN CASE 12-34V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$226 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

14. CASE 12-35V – LEE R. WOLFGRAM, SR. – 10022 LINNET STREET – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 9)

Chairman Wessling asked for staff comment. Neighborhood Coordinator DeGrande reviewed that there were previous assessments due to the property owner not obtaining a rental license

when other people lived at the property. She reported that he was contacted to try and confirm whether relatives or other people were on site so they could issue a license. She noted that another violation letter was sent earlier this year, which is when the \$1,000 penalty was charged to the property.

Chairman Wessling asked if there is a rental license on the property. Neighborhood Coordinator DeGrande stated that there is no rental license at this point. She commented that another citation has been issued, as he is not responding. She stated that they are taking his word that his sister is living there and have given him extensions to get the homestead changed but he has not responded.

Chairman Wessling asked about communication with the homeowner. He asked whether he has been contacted by mail and by phone. Neighborhood Coordinator DeGrande stated that both have been used.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-35V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$1,000 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

15. CASE 12-37V – TERRY BELANGER – 11337 IBIS STREET – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 11)

Chairman Wessling asked for staff comment. Neighborhood Coordinator DeGrande reviewed that the penalty is for an expired license. She commented that the license is due the first of May each year. She commented that there was no response so another notice was sent out. She reviewed that upon receiving the second notice the property owner came into compliance.

Commissioner Spano-Madden asked why the second \$300 was not charged. Neighborhood Coordinator DeGrande stated that this was an oversight that the homeowner benefits from.

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER THORUP, IN CASE 12-37V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$300 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

16. CASE 12-39V – CINDY GLASER POA TO EUGENE BECKER – 456 113TH LANE NW – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 13)

Chairman Wessling asked for staff comment. Neighborhood Coordinator DeGrande commented that the property is vacant. She confirmed that it is currently in compliance.

Commissioner Rosand noted that the property is going into foreclosure.

Chairman Wessling stated that the property owner believes the property was targeted because it is vacant and that he does not see a reason to reduce the fine. Commissioner Rosand commented that the property received a lot of attention from staff.

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER THORUP, IN CASE 12-39V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$1,490 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

17. CASE 12-41V – CHERIE WINCHESTER – 2241 COON RAPIDS BOULEVARD – SPECIAL ASSESSMENT OBJECTION (AGENDA ITEM 15)

Chairman Wessling asked for staff comment. Neighborhood Coordinator DeGrande reviewed that the citation is a second offense. She noted that the first citation is not being dealt with at this time. She reviewed that the property is in compliance so half of the \$600 fine is being charged.

Commissioner Thorup commented that many vehicles take turns being parked at this property. She noted that the homeowner admits to having lost keys for one car.

MOTION BY COMMISSIONER THORUP, SECOND BY COMMISSIONER SPANO-MADDEN, IN CASE 12-41V THE BOARD OF ADJUSTMENT AND APPEALS RECOMMENDS THE CITY COUNCIL AFFIRM THE \$300 SPECIAL ASSESSMENT IN ITS ENTIRETY.

THE MOTION PASSED UNANIMOUSLY.

18. ADJOURNMENT

MOTION BY COMMISSIONER ROSAND, SECOND BY COMMISSIONER THORUP, TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY.

Chair Wessling declared the meeting adjourned at 9:15 p.m.

Respectfully submitted,
Beth Bostrom
Board of Adjustment and Appeals Secretary



Board of Adjustment and Appeals - Regular Session

1.

Meeting Date: 12/06/2012

Subject: Appeal of Hearing Examiner Decision, Case 12-44V, Scott Nellis, 10320 Grouse St

From: Cheryl Bennett, Housing & Zoning Coordinator

INTRODUCTION

The matter before you in Case 12-44V is an appeal filed by Mr. Scott Nellis, 10320 Grouse Street, of the hearing examiner's decision in the appeal of City of Coon Rapids administrative citations 45839-20632 and 45839-20633, issued by staff on June 4, 2012. This appeal before the Board is being conducted in accordance with City Code Chapter 2-1100, Administrative Procedures and Penalties. For your reference, Chapter 2-1100 can be found in the attached materials as Exhibit 35-37 Page 9 through Page 13.

BACKGROUND & CONSIDERATIONS

The procedure is different from previous appeals of staff determinations heard by the Board in which your decisions are appealable to the City Council. Decisions of the Board under the procedures set forth in Chapter 2-1100 are appealable to the Minnesota Court of Appeals under the Minnesota Rules of Civil Procedure. A suggested procedure for conducting this hearing was forwarded to the Board by my office on November 21, 2012, along with material from Assistant City Attorney Douglas Johnson, including the City's proposed Findings of Fact, Conclusions of Law, and Order, and Memorandum of Law. The procedure document, *Suggested Procedure for Conducting Nellis Hearing*, has been extracted from the material sent earlier and is presented immediately following this memorandum for your reference.

The Board should adopt a procedure for conducting the hearing. Staff recommends the Board adopt the procedure set forth in the attached document, *Suggested Procedure for Conducting Nellis Hearing*.

Next you will find, in order, the following documents to assist you in your deliberations:

- November 20, 2012, letter from Assistant Attorney Douglas L. Johnson to Scott Nellis (3 pages)
- City of Coon Rapids Board of Adjustment and Appeals Findings of Fact, Conclusions of Law, and Order (12 pages)
- Memorandum in Support of Proposed Findings of Fact, Conclusions of Law, and Order (27 pages, including citations)
- Notice of Filing of Additional Documents and Changes to Proposed Findings of Fact (1 page)
- Respondent's Notice of Witness Qualifications (2 pages)
- Respondent's Exhibits

ACTION REQUESTED

The Board of Adjustment and Appeals is requested to adopt a procedure for the conduct of the hearing as set forth in the document *Suggested Procedure for Conducting Nellis Hearing* and, further, conduct the appeal hearing in Case 12-44V, In re Appeal of Scott Nellis.

Attachments

Suggested Procedure for Conducting Hearing

11-20-12 Letter to Nellis

Findings of Fact, Conclusions of Law, and Order

Memorandum

Additional Documents and Changes

Witness Qualifications

R3

R7

R8

R9

R12

R13

R15

R16

R19

R24-26

R27

R28

R29

R30

R31-33

R34

R35-37

R38

Suggested Procedure for Conducting Nellis Hearing

1. Call to Order.
2. Call the case of City of Coon Rapids v. Nellis.
3. Ask counsel for the City to identify himself; ask Mr. Nellis and his counsel (if present) to identify themselves.
4. Give brief description of the alleged violations.

Mr. Nellis is alleged to be in violation of Coon Rapids City Code on October 26, 2011, when his property at 10320 Grouse Street in Coon Rapids was inspected.

The two violations alleged are:

A. Maintaining an illegal home occupation in violation of City Code sections 11-703 and 11-603(5) or 11-604(5); and

B. Keeping non-domestic animals, in violation of City Code sections 6-503(1) and 6-502(2).

Mr. Nellis was ordered to cease these uses and pay an administrative fine of \$300. He appealed the order and had an informal hearing with the City's hearing examiner. The examiner affirmed the order in its entirety on October 2, 2012. Mr. Nellis appeals that determination to this Board.

5. Mr. Nellis may now admit the violations, or deny the violations and proceed to a hearing. If he wishes to admit the violations, the Chair will ask for a recommendation first from the City Attorney, then Mr. Nellis or his representative, then deliberate on the appropriate disposition.

If Mr. Nellis wishes to continue to deny the violations:

6. The Chair will give a brief description of the procedure to be followed for this hearing:

A. The City has the burden to prove, by a preponderance of the evidence, that these violations occurred on October 26, 2012.

B. Prior to taking testimony, the Chair will allow the parties to make opening statements. This is not the time to argue the case, but only for each party to indicate to the Board what it intends to offer by way of evidence as regards the allegations. A party may waive an opening statement. The City's representative goes first, followed by Mr. Nellis. Mr. Nellis may also reserve his opening statement until he presents his case in chief.

C. The Chair will then swear all witnesses that may be called to testify in this case. Witnesses will be asked to stand, raise their right hands, and take an oath to tell the truth. A prospective witness will be deemed to be sworn in for the duration of the hearing, including any adjournments.

D. The City will begin with its case in chief. It may call witnesses and offer exhibits to the Board to prove the violations. Mr. Nellis or his counsel may offer legal objections to evidence. The Chair will sustain or overrule any objections after hearing from both parties. If an objection to a question is sustained, a witness shall not answer it. Any evidence in the record to which the Chair has sustained an objection will be disregarded by the Board. Mr. Nellis will have an opportunity to ask questions of any witness called by the City.

E. When the City has finished its case in chief, it will rest its case on the record, and Mr. Nellis may proceed with his opening statement, if it had been reserved, then any evidence he may wish to offer regarding the violations. Again, this is a time for offering facts into evidence, not for argument. The City has the same right to object to evidence, with ruling by the Chair, and ask questions of Mr. Nellis's witnesses.

F. When Mr. Nellis has rested his case, the City may offer evidence to rebut any evidence Mr. Nellis has offered. When the City has finished, Mr. Nellis may offer sur-rebuttal evidence, but it must be limited to the City's rebuttal.

G. When both parties have rested, the Chair will request closing arguments, first from the City, and then from Mr. Nellis.

H. The Board will deliberate on the violations. If it affirms either or both of the violations, it will issue an order and set a compliance date by which the violation or violations must be corrected.

Two other procedural notes:

I. If a party wishes to offer an exhibit such as a document or a photograph that has not been pre-sent to the Board and the other party, it will need to be marked by the Chair. Appellant's exhibits shall begin with an "A" followed by a unique number such as "A-12." Respondent's exhibits shall begin with "R." An exhibit must be shown to the opposing party or counsel before offering it to the Chair. The Chair will ask if there is any objection to the exhibit before receiving it.

H. This proceeding will be recorded by video equipment, so it is important not to speak when anyone else is talking, except to make an objection, and when speaking, to use good diction so if the hearing needs to be transcribed for appeal, the transcription can be accurate.

J. Parties and witnesses must direct all statements and arguments to the Chair, not to opposing counsel or witnesses, unless are asking a witness a question.

6. Motion to Adopt Procedure for Hearing should be entertained after either party has provided comment.

7. Conduct the hearing.

- A. Opening Statement from the City.
- B. Opening Statement from Mr. Nellis (unless reserved or waived).
- C. Swear all witnesses. (“All persons who may testify in this hearing must now rise and raise your right hands to be sworn. You do swear that the testimony you are about to give will be true, so help you God? Be seated.”)
- D. City’s case in chief.
- E. Mr. Nellis’s opening statement (if reserved).
- F. Mr. Nellis’s case in chief.
- G. City’s rebuttal (if any).
- H. Mr. Nellis’s rebuttal (if any).
- I. City’s closing argument.
- J. Mr. Nellis’s closing argument.
- H. Deliberation and Determination.

8. Adjourn.

November 20, 2012

Mr. Scott Nellis
10320 Grouse Street N.W.
Coon Rapids, MN 55433

Re: December 6, 2012 Appeal to the Board of Adjustment and Appeals

Dear Mr. Nellis:

Attached please find the City's proposed Findings of Fact, Conclusions of Law, and Order, and its Memorandum of Law being provided to the Board prior to the upcoming hearing on December 6, 2012, together with a proposed procedure for handling the hearing. Witness qualifications statements and exhibits will sent at a later date. If the matter is contested, the City would call the following witnesses:

Name, Title	Summary of Testimony
Marc Nevinski, Director of Community Development	Zoning of property, limitations on conditional uses, opinion if home occupation meets code; explanation of documents
Leya Drabczak, Inspector	Visit to the home on October 26, 2011; opinion whether home occupation was clearly incidental to residential use of the property
Keith Streff, Animal Humane Society	Visit to the home on October 26, 2011; opinion whether home occupation was clearly incidental to residential use of the property; types of animals on the property
Nick House, Coon Rapids Fire Department	Visit to the home on October 26, 2011; opinion whether home occupation was clearly incidental to residential use of the property; "2800" application to the property
Desiree Toninato, Coon Rapids Police Department	Visit to the home on October 26, 2011; opinion whether home occupation was clearly incidental to residential use of the property
Shannon Moen, North Metro Chemical Assessment Team	Incidence of ammonia inside the premises; normal levels for dwelling units

If you choose to call witnesses other than those noted above, please notify this office of their name and address at least five days before the hearing. If you require a subpoena to produce a witness, please contact me at your earliest convenience to secure a subpoena from the Board of Adjustment and Appeals. Note that you would be required to pay for and arrange for subpoena service.

Please note that this hearing is quasi-judicial in nature. City code allows you to appear on your own behalf and speak as a party; however, if you wish to have a representative speak on your behalf, the Board must require that this person be an attorney licensed to practice law in Minnesota. You may, of course, call any witnesses you believe may be helpful to the Board's just resolution of the case. Witnesses may not, however, argue to the Board on your behalf.

The Board will adopt a procedure to conduct the hearing. A synopsis of the City's proposed procedure is included with these materials. If you have any objections to the City's proposed procedure, please inform me at your earliest convenience so that we may arrange a conference with the Chair to arrive at a mutually agreed-to procedure before the hearing commences.

At the hearing, you would have the right to admit the violations that are alleged from October 26, 2011, or you may continue to deny the violations. If you decide to admit the violations, you would have the right to address the Board before it determines the appropriate consequence. The City's recommended action, should a violation be affirmed, is noted in the attached proposed order. If you wish to admit the violations based on the attached materials, but wish to try to negotiate the terms of the order or arrange for a future compliance inspection, please notify me to schedule a settlement conference with staff.

Please note that the proceedings will be taken down by video for a possible future appeal to the Minnesota Court of Appeals, but will not be transcribed unless ordered and paid for by the party that appeals.

To expedite the hearing process, please notify me if you wish to object to any of the enclosed exhibits, and state the legal basis for your objection. Exhibits are numbered in accordance with the City's proposed Findings of Fact. If you do not object, I will assume there will be no objection. I note also that the bulk of your objections seem not to contest the actual facts of your home occupation, but instead the validity of the laws that would apply. I also see that you are making a "grandfathering" argument, which I address in my Memorandum in Support of Proposed Findings. Please note that, to expedite the proceedings, you may stipulate to any or all of the proposed findings of fact that the Board will consider, and leave to the Board the legal conclusions that would be required to find you in violation of City Code. You may, of course submit at any time or at the hearing any materials you wish to help the Board make its determination.

Finally please note that the Board may not under the ordinances determine the validity of City Code provisions, so you may not, for example, litigate at this hearing their constitutionality. The Board may, however, interpret City Code, which means that they may consider the grandfathering issue, whether you possessed prohibited snakes, and the ultimate issue whether

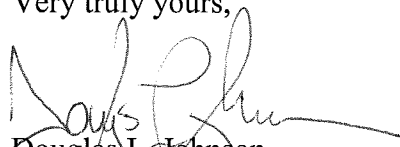
Mr. Scott Nellis
November 21, 2012
Page 3

your home occupation goes beyond "clearly incidental" use of the residential use of the property, which would violate code section 11-604(5)(a).

If I do not hear from you I will assume you will be prepared for a contested hearing.

Thank you for your attention to this matter.

Very truly yours,



Douglas L. Johnson
Assistant City Attorney

mp

Enclosures

cc: Board of Adjustment and Appeals

City of Coon Rapids Board of Adjustment and Appeals

In re

Appeal of Scott Nellis

10320 Grouse Street N.W.

Coon Rapids, MN

File Numbers:

45839-20632

45839-20633

The above matter came before the Board on December 6, 2012, for hearing pursuant to the appeal of the above citations under Coon Rapids City Code section _____. Douglas L. Johnson, Assistant City Attorney, appeared on behalf of the City of Coon Rapids, _____ appeared on behalf of Mr. Nellis. Based on the files and proceedings herein, the Board, being duly advised in the premises, makes the following:

Findings of Fact

Following is a table of elements the City intends to prove, the source of the information, and a notation whether an exhibit is involved. The final column is also a place for Board members' notes.

Element	Source	Notes/Exhibit
1. The property that is the subject of this hearing is located at 10320 Grouse Street in Coon Rapids, MN	Leya Drabczak Marc Nevinski	
2. At all relevant times, the subject property was zoned LDR-2 (Low Density Residential – 2) according to the city's zoning code, was guided for residential development, and subject to the requirements of City Code Chapter 11-600. Mr. Nellis has never applied for a conditional use permit for a home occupation on the property. As of February 8, 1976, and at all later relevant dates, City Code has required any home occupation in residential districts to be "clearly incidental" to the residential use of the property and "does not change the character thereof."	Marc Nevinski	
3. At all relevant times, the owner and occupant of the subject property was Mr. Scott Nellis.	Leya Drabczak	Exhibit 3 (Mr. Nellis's Appeal of Notice of Determination)

4. Leya Drabczak is the Housing Inspector employed by the City of Coon Rapids.	Leya Drabczak	
5. October 18, 2011, Drabczak received a report of animal bedding being deposited on the subject property outside the residence, and a foul smell coming from the property. The reporting party indicated speaking with Mr. Nellis and learning Mr. Nellis breeds snakes and had about 100 snakes on the premises.	Leya Drabczak	
6. On October 19, 2011, Drabczak inspected the property and found several mounds of shavings in the back yard, and detected a pungent smell coming from them. The smell could be detected from the adjoining property.	Leya Drabczak	
7. Afterward, but prior to October 26, 2011, Drabczak visited an internet site called snsnares.com that referenced a business with a Coon Rapids, MN post office box, advertising the raising and breeding of snakes for sale. The site stated: "Today I specialize in California Kingsnakes, Ball Pythons, various boas, and Aussie Pythons," and listed various boas for sale.	Leya Drabczak	Exhibit 7 (Internet copy)
8. Also prior to October 26, 2011, Drabczak advised Animal Humane Society Investigator Keith Streff of this information. Streff stated that based on the information provided, it was likely that Mr. Nellis had a significant inventory of snakes at the residence.	Keith Streff	
9. Based on this and other information, the City of Coon Rapids obtained and executed a search warrant on the subject property on October 26, 2011, at about 1:40 p.m. The warrant	Leya Drabczak Keith Streff	Exhibit 9 (Search Warrant)

execution was attended by Drabczak, Streff, and several Coon Rapids police officers. Mr. Nellis was present at the residence. Streff could detect a distinct odor standing on the front steps outside the residence.		
10. Upon entry, Drabczak and Streff noted the odor increased. It was a very strong ammonia smell, which burned their eyes and throats. They wore masks for the remainder of the inspection. Streff noted the reptile rooms were about 80 degrees Fahrenheit. Officer Toninato became physically ill after being inside the residence for a short time. She remained ill for days afterward. All members of the inspection team had to periodically leave the residence for fresh air before continuing the inspection.	Leya Drabczak Keith Streff CRPD Desiree Toninato	
11. Mr. Nellis admitted breeding, raising, and selling reptiles. He considers himself a "hobby breeder," and said he owned about 100 snakes among other reptiles and rodents as feeder stock.	Leya Drabczak Keith Streff CRPD Desiree Toninato	
12. The residence is a split level home containing about 2500 square feet and 4 bedrooms, 2 baths, 1 kitchen, 1 living area, and 3 other rooms. The square footage includes a 572 square foot garage. The residence is split into a main level, an upper level, and a lower level. Streff noted other rooms, including the garage, were cluttered to near capacity, but were "manageable."	Leya Drabczak Keith Streff	Exhibit 12 (Floor plan of residence).
13. A room of about 122 square feet ("Study") on the main level housed about 80 snakes, in over 50 cages, of various sizes and species. The cages had glass	Leya Drabczak Keith Streff	Exhibit 13 (photo of Study)

fronts with sliding doors, and were stacked one upon another from floor to ceiling. These cages were located around the entire perimeter of the room. An island of about 35-48 cages was standing in the middle of the room, also stacked from floor to ceiling. The walkways between the cages was less than 3 feet. The room was dark. Lights and the ceiling fan could not be turned on because cages blocked the fixtures. The snakes struck at the glass fronts as the inspectors passed by.		
14. The upper level living room, approximately 532 square feet, housed 3 large aquariums with lizards in them. The smell in the upper level of the home was as strong as the lower and main levels.	Leya Drabczak Keith Streff	Exhibit 14 (photo of Living Room)
15. The lower level of the home housed 23 separate areas of snakes and rats, in cages. One room, (west bedroom) approximately 145 square feet, had about 120 snakes of various species in it. Other animals in this room included hissing cockroaches, meal worms, and various lizards. (East bedroom) had The approximately 80 cages were located around the perimeter of the room from floor to ceiling. Snakes occupied the majority of these cages.	Leya Drabczak Keith Streff	Exhibit 15 (photo of Lower Level Room 1)
16. The second lower level room (unfinished area) , about 483 square feet, had numerous cages containing snakes, rats, and mice. The cages were stacked from floor to ceiling. There were approximately 300 snakes and 300 rats in these cages.	Leya Drabczak Keith Streff	Exhibit 16 (Photo of Lower Level Room 1)
17. Streff and Drabczak found the lack of ventilation for the number	Leya Drabczak Keith Streff	

of animals made the odor "unmanageable."		
18. Streff noted Mr. Nellis uses a carbon dioxide tank with attached hose to euthanize rodents. There was a significant number of bedding, feed, and other related supplies stored in the basement and attached garage, as well as a number of refrigerator/freezer appliances in the lower level, some of which were filled to capacity with dead rodents.	Keith Streff	
19. The approximate total number of snakes in the home were 300, and of mice, 400. Streff observed 200-300 non-venomous snakes, a cat, lizards, skinks, iguanas, hissing cockroaches, rats, mice, and various feed insects in the maggot, pupae, or larvae stage.	Keith Streff	Exhibit 19 (February 17, 2012 inventory from Mr. Nellis)
20. Streff was of the opinion that the crowding of the animals presented a risk of disease and cross-contamination, and that the business would be better suited to a commercial facility. Snakes of the kind and numbers present at this residence require special handling by persons who are well-trained. Snakes in general, and the City-prohibited snakes in particular, can be dangerous to humans, especially to those who lack the knowledge to handle them. In kind and number here they are unsuited to the residential use environment.	Keith Streff	
21. Mr. Nellis said he did not have a current inventory of animals. He said he buys and sells breeds continually.	Keith Streff	
22. Mr. Nellis said, and Streff confirmed there were no venomous snakes on the	Keith Streff	

property.		
23. All members of the inspection team have lived in residences all their lives. All were of the opinion that it would be impossible for them to live normally within the Nellis residence owing to its current home occupation, and that the home occupation was not "clearly incidental" to the principal use of the dwelling.	Leya Drabczak Keith Streff CRFD Nick House Desiree Toninato	
24. Coon Rapids Fire Department fire fighter Nick House inspected the premises and noted numerous challenges that would be encountered if fire fighters were called to a fire on the premises. These challenges would be above and beyond what would be found for any other home occupation in the city where the home occupation was in fact "clearly incidental" to the primary use of the property. As a result the property has been listed as a "2800" property by Coon Rapids, which means firefighters and police will not enter the building if there is a call.	Nick House Leya Drabczak	Exhibit 24-26 (Fire reports)
25. Mr. Nellis was cited for violations of City Code Section 8-101 for debris, including animal feces and bedding, in the back yard, and given a compliance date of November 6, 2011. A follow-up inspection on 1/2/2012 determined all shavings had been removed.	Leya Drabczak	Exhibit 24-26
26. North Metro Chemical Assessment Team inspector Shannon Moen brought equipment to the home and learned ammonia gas to be 10-20 parts per million, which they judged to be elevated, and higher than what is normally found in a habitable space. A normal amount of ammonia within a	Shannon Moen	Exhibit 24-26

residential space is preferably 0, but certainly less than 1 part per million.		
27. Following the inspection, City staff initiated a Housing Code Violation action against Mr. Nellis, which was heard by the Coon Rapids City Council on March 6, 2012. Following that hearing, Council determined to table that action and directed staff to work with Mr. Nellis toward a mutually-agreeable resolution of the issues on the property.		Exhibit 27 (Council Minutes)
28. Mr. Nellis allowed City Attorney David Brodie and Director of Community Development Marc Nevinski to inspect the premises on March 22, 2012. On March 28, 2012, Mr. Brodie sent Mr. Nellis a letter reiterating the City's position that the property was still uninhabitable, and that the property otherwise violated City Code, and proposing that he (1) remove all prohibited snakes from the residence; (2) reduce the space in the residence devoted to the business; and (3) reduce the level of ammonia at the residence.	Marc Nevinski	Exhibit 28 (Letter from David Brodie indicating City's position on compliance)
29. On April 5, 2012, Mr. Nellis declined the City's proposal, specifically declining to remove all prohibited snakes from the residence. He claimed he had reduced the amount of space in the residence devoted to his "reptile hobby business," reduced the number of live rats in the residence by one-third, and had reduced the amount of ammonia in the residence so as to be "non detectible to barely noticeable inside" the residence. Mr. Nellis has refused the City's requests to	Marc Nevinski.	Exhibit 29 (April 5, 2012 letter from Mr. Nellis)

re-inspect the premises.		
<p>30. Coon Rapids City Code Section 11-603(5) allows for home occupations as accessory uses in residentially-zoned areas as follows:</p> <p>(5) Home occupations meeting the following criteria:</p> <p>(a) The home occupation is clearly incidental and secondary to the residential use of the property and does not change the character thereof.</p> <p>(b) Nothing is discernible [sic] to surrounding properties indicating that a home occupation is being conducted except for a sign as permitted by Chapter 11-2100, a garden, or one motor vehicle (otherwise permitted by 11-1800) whose nature or signage indicates it is used in the business. There is no outdoor storage or display of equipment or materials used in the home occupation.</p> <p>(c) No internal or external alterations are made that are not customarily found in dwellings.</p> <p>(d) If the home occupation is carried on in the garage, the minimum amount of required garage space is maintained as garage space.</p> <p>(e) No parking spaces are improved to provide for the home occupation. Any vehicle whose nature or signage indicates it is used in the business is parked in the driveway or garage.</p> <p>(f) No one who does not reside on the premises works on the premises. No one is transported from the premises to a job site who does not reside on the premises.</p>		Exhibit 30 (City Code 11-600)

<p>(g) The home occupation is serviced by delivery vehicles no larger than 26,000 pounds gross vehicle weight.</p> <p>(h) Permitted home occupations are generally those that do not bring people or customers to the residence and that are not or prohibited home occupations. This would include, but not be limited to, the following: a craft business that markets goods at craft 11-600-2 fairs, off-premises shops, parties, etc., so that no customers visit the residence; a typing, accounting, or mailing service where all work is picked up and delivered to the customer; the office for a traveling salesperson or a cleaning service; a retail business where all orders are received by mail or telephone and are delivered to the customers' premises; and a sewing business that does not involve customer visits.</p>		
<p>31. City Code Section 6-503(1) provides: "It shall be unlawful to keep, maintain, harbor, or feed any non-domestic animal within the City except where permitted elsewhere in this Chapter."</p>		Exhibit 31-33 (City Code 6-500)
<p>32. City Code Section 6-502(1) provides: "Domestic animals are defined as non-poisonous snakes or snakes not prohibited by this Chapter, birds kept indoors, non-poisonous spiders, turtles, lizards, hamsters, chinchillas, mice, rabbits, gerbils, white rats, guinea pigs, or similar small animals capable of being maintained continuously in cages and indoors."</p>		Exhibit 31-33
<p>33. City Code Section 6-502(2) provides, in part: "Non-domestic</p>		Exhibit 31-33

<p>animals are defined as all other animals such as cows, sheep, pigs, potbellied pigs, bees, goats, swine, llamas, mules, horses or other hoofed animal, chickens, ducks, or other agricultural animals or domestic fowl and any animal, reptile or fowl, which is not naturally tame or gentle but is of a wild nature or disposition or which, because of its vicious nature or other characteristics, would constitute a danger to human life or property including: ***</p> <p>(f) any snake, that is a member of the pit viper or Boidae family, including but not limited to copperheads, water moccasins, rattlesnakes, fer-de-lances, bushmasters, asps, cobras, mamba, kraits, coral snakes, sea snakes, South American anacondas, Asian reticulated pythons, boa constrictors, tree boas and sand boas;</p> <p>(g) any other snake or reptile which by their size, vicious nature, or other characteristic is dangerous to human beings.”</p>		
<p>34. On 10/23/2011, Mr. Nellis was issued a citation pursuant to City Code Section 6-500 and 8-101 alleging violations on the property as of October 26, 2011, and seeking abatement of the violations noted. That citation was later dismissed, but reissued as citations number 45839-20632 and 45839-20633, on June 4, 2012. The first citation alleged the following violations: 6-503(1) Keeping of Non-Domestic Animals (referencing 6-502(2) (Non-Domestic Animals defined), 6-502(f) (particular snakes), and 6-502(g) (poisonous</p>	<p>Marc Nevinski</p>	<p>Exhibit 34 (Citations)</p>

snakes) The second citation alleged the maintenance of an illegal home occupation under 11-703 (referencing 11-603(5))		
35. Mr. Nellis appealed the citation pursuant to Coon Rapids City Code section 2-1106(1) and met with the City's hearing examiner on June 28, 2012.		Exhibit 35-36 (October 2, 2012 determination of Hearing Examiner)
36. On October 2, 2012, the hearing examiner affirmed the citation in its entirety and extended the date for compliance to October 12, 2012.		Exhibit 35-36
37. Mr. Nellis appealed the determination of the hearing examiner pursuant to City Code section 2-1106(2) on October 5, 2012, and the matter was placed before this Board on December 6, 2012.		Exhibit 37 (October 5, 2012 letter of appeal)
38. Numerous other ordinances regulate either the number of animals or the kind of animals, or both, that are lawfully possessed in the jurisdiction. Streff testified that there are good reasons to prohibit the kind of animals that are noted in City Code section 6-502.	Keith Streff	Exhibit 38 (Copies of ordinances)
39. Marc Nevinski testified that, based on his experience with home occupations in the city, and the details of the original inspection as well as his follow-up inspection, he is of the opinion that the nature and intensity of Mr. Nellis's operation is not clearly incidental and secondary to the residential use of the property.	Marc Nevinski	
40. The City of Coon Rapids has never made a determination that	Leya Drabczak Marc Nevinski	

Mr. Nellis's operation or possession of snakes was lawful until October 26, 2011.		
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Conclusions of Law

1. Mr. Nellis's operation is not an allowed home occupation accessory use because it is not clearly incidental and secondary to the residential use of the property. Coon Rapids City Code Section 11-603(5)(a). Although he has never applied for a conditional use permit, that restriction is also present for those uses. Coon Rapids City Code Section 11-604(5)(a).
2. As of the violation date, Mr. Nellis possessed prohibited snakes. Coon Rapids City Code Section 6-502(2)(f); 6-503(1) (effective September 21, 2010).
3. City Staff contends there is a rational basis to make it unlawful to possess the snakes as noted in Coon Rapids City Code Section 6-502(2)(f). *Vier v. City of Woodbury*, No A11-1948 (Minn. App. May 14, 2012, 2012 WL 1658932); *State v. Reinke*, 702 N.W.2d 308 (Minn. App. 2005). This Board may not determine the validity of Coon Rapids ordinances. Coon Rapids City Code Section 3-208(2)(d).
4. Because the lawfulness of Mr. Nellis's operation has never been determined, and because the regulations involved are regulatory in nature, concern the possession of items independently of zoning regulations, and are subject to police powers, his claim that he has a valid "grandfathered" use is without merit. *Vier, id.*; *State v. Howard*, 360 N.W.2d 637 (Minn. App. 1985); *State v. Schuler*, No. C9-96-1047 (Minn. App. February 25, 1997, 1997 WL 76337).

Order

1. Citation 45839-20632 is hereby affirmed in its entirety.
2. Citation 45839-20633 is hereby affirmed in its entirety.
3. Mr. Nellis is ordered: (1) To remove all animals from City that are prohibited by City Code; (2) To reduce the total square footage of his home occupation in the home to be no more than 25% of the habitable square footage; and (3) To reduce the ammonia level inside the home to be less than 1 part per million inside the residence, with no ammonia detectible outside the home.
4. Mr. Nellis is ordered to pay a civil penalty of \$300.00 to the City of Coon Rapids.
5. Mr. Nellis is granted until _____ to pay his penalty and come into compliance with this Order.

By the Board:

Date:

Its: _____

In re

Appeal of Scott Nellis

10320 Grouse Street N.W.

Coon Rapids, MN

File Numbers:

45839-20632

45839-20633

Memorandum in Support of Proposed Findings of Fact, Conclusions of Law, and Order

This matter will come before the Board to determine whether the appellant's property was in violation of City Code on October 26, 2011. The City will ask the Board to affirm the citations issued, and order compliance with City Code.

I. Argument

On October 26, 2011, City staff and other personnel visited the Nellis residence in Coon Rapids on a warrant inspection following allegations from neighbors of odors coming from the property, and refuse being dumped outside. The inspection unearthed a massive collection of hundreds of snakes and rodents in dozens of cages throughout the home, and a noxious odor inside that was so strong inspectors had to wear facemasks and periodically leave the premises for fresh air. To accommodate the animals inside, Mr. Nellis had the heat set to a very high temperature. He admitted maintaining a mail order business of selling the snakes to interested parties. A number of the snakes we admittedly being possessed in violation of City Code. The property was in such an extraordinary state that the property was later placed on a "2800" watch, meaning police and fire personnel were instructed not to enter the home even in case of an emergency.

Following the inspection, staff determined there were two main violations occurring at the residence: (1) possession of illegal snakes; and (2) maintenance of an illegal home occupation.

A. Snake Possession.

As to the facts, this violation is not subject to much controversy. Admittedly, Mr. Nellis was in possession of snakes in violation of City Code. His arguments against this violation are more legal in nature, and are discussed in part here, and below.

City Code has changed with respect to the definition of non-domestic animals over time. The Board has been provided with the animal regulations that have been in effect in the City since well before this violation occurred. A synopsis of the history of those regulations follows.

1. Regulations Until February 28, 1984.

City Code has always divide animal regulations between (1) cats and dogs, and (2) other animals. In the "other animals" category, there is a further split between "domestic animals" and

other animals, historically called “nondomestic animals.” Until February 28, 1984, domestic animals were defined as any animals that were “capable of being maintained within the residence and within a cage, including, but not limited to, birds, hamsters, chinchillas, lizards, snakes, etc.” In keeping with the laundry list provided, “etc.” typically would mean other *similar* small, manageable animals. The definition would presumably exclude, for example, elephants, even though they are trainable, and could perhaps live in a cage, simply because of their size. Any animal not meeting the “domestic animals” definition were considered to be nondomestic, and persons were allowed up to four of them on premises five acres or more. There were no restrictions on the number of domestic animals, other than dogs and cats, that could be kept.

2. February 28, 1984 to September 21, 2010.

Effective February 28, 1984, the definition of domestic animals was changed slightly to eliminate the words “capable of,” which meant that animals in the domestic category were *required* to live in cages. Most likely the change came about when a residence was discovered where hundreds of hamsters or some similar animal were found living out of cages in a residence. The other change was to change the number of nondomestic animals to allow one for premises of five acres or less, and to remove any numeric restriction for larger parcels. For larger parcels, nuisance regulations still applied. By 1984, there were many fewer large parcels within the City, so it was probably believed these relaxed regulations were more appropriate for them. But because the City was becoming more urbanized, it was also felt that four animals on smaller parcels was too intense. Curiously, one non-domestic animal was now allowed on any-sized parcel within the City.

3. September 21, 2010 to Present.

These changes may have allegedly affected Mr. Nellis’s operation. As of September 21, 2010, the definition of domestic animals changed to “non-poisonous snakes or snakes not prohibited by this Chapter, birds kept indoors, non-poisonous spiders, turtles, lizards, hamsters, chinchillas, mice, rabbits, gerbils, white rats, guinea pigs, or similar small animals capable of being maintained continuously in cages and indoors.” Non-domestic animals was redefined to be considerably more itemized, instead of simply being “all other animals.” Important to this case, the non-domestic animal definition was changed to include numerous poisonous snakes and boa constrictors. Again, there were no specific limitations placed on the number of non-dog/cat domestic animals that could be kept.

Later in this memorandum, Mr. Nellis’s contention that his keeping of prohibited snakes ought to be “grandfathered in” under the pre-September 21, 2010 ordinance will be addressed; however, it is clear that Mr. Nellis was in possession of snakes prohibited by City Code as of October 26, 2011.

B. Illegal Home Occupation.

Home occupations are regulated through the zoning code. In residential districts, there are two types of home occupations that are allowed. The first type, included in “Accessory Uses,” does not require a conditional use permit; the second type does. Accessory use home occupations are

those that involve no outside employees or traffic, among other attributes that would indicate a more intensive use. As such they are not required to go through a City permitting process. They are regulated by City Code Section 11-603(5).

Home occupations that require a conditional use permit are those that are more intense. They include such businesses where clients visit the a home, such as with massage therapists, for example, or those that might have outside employees who drive to the residence. These types of home occupations are regulated by City Code Section 11-604(5).

Mr. Nellis has never applied for a home occupation permit, so his home occupation must, if it is to be lawful, conform to the requirements of Accessory Uses under 11-603(5). But it is important to note that, whether his home occupation would fall within the Accessory Use type or the Conditional Use Permit type, it could be allowed *only* if it were “clearly incidental and secondary to the residential use of the property,” and only if it did not change property’s “character.” The City contends that Mr. Nellis does not meet the “clearly incidental” test, under any reasonable analysis. Another way to think of the standard is this: “Is it *clear* that the use is *incidental* to the residential character of the premises?” If it is not clearly incidental, Mr. Nellis fails the test. Here we have a residence having a number of rooms so crowded with animals and cages it is difficult even to move around, much less use for their residential living purpose. We have heat set to unusually warm temperatures, odors that are noxious, and numerous normal appliances used almost exclusively for the maintenance of the home occupation. Shades are drawn, and lights are turned low. The property is so extraordinary it cannot be tended in a normal manner if there were a police or fire emergency. Entering persons became ill, had to wear masks, and needed to leave the residence for fresh air. No ordinary home-dweller would likely even set foot in the place absent a very good reason. In short, it is a home for snakes, not humans. It is difficult to imagine a more compelling set of facts to justify a finding that this home occupation goes well beyond what is a “clearly incidental” non-residential use of the property.

Though “clearly incidental” is not defined, the City believes it is being reasonable in this extraordinary case of suggesting three things, absent future code changes to clarify the requirement further, to be: (1) removing all prohibited snakes from the residence; (2) reducing the operation so that it occupies no more than 25% of the square footage of the home; and (3) reducing the ammonia levels to be 1 ppm or less within the home, and undetectable on the outside. It is also expected that the occupation not generate any additional code violations, such as the unlawful deposit of waste materials on the property.

II. Mr. Nellis’s Legal Arguments.

Mr. Nellis has previously made several legal arguments why his use of the property should be allowed to continue. They are (A) The use of the property is a valid nonconforming use; (B) The City is not justified in outlawing the animals it has chosen to outlaw; and (C) Mr. Nellis has changed his use since the offense date to achieve compliance. These arguments are addressed separately below.

A. Nonconforming Use.

The doctrine of nonconforming uses is applied in zoning cases. Essentially, zoning uses *lawfully existing* at the time of an adverse *zoning code change* may continue to exist until they are removed or otherwise discontinued. *State v. Reinke*, 702 N.W.2d 308 (Minn. App. 2005). The doctrine is typically applied in situations where a building becomes nonconforming because of a setback change, and similar situations where the use tends to “run with the land.” Mr. Nellis contends he began his business at a time when it was legal to do so, and that he should be allowed to continue it until it ceases.

The City contends nonconforming use law should not apply to his operation. First, Mr. Nellis’s enterprise did not come to the attention of the city until October of 2011; therefore it had no way to determine the lawfulness of his use of the property before that date. Second, the violations in part stem from Mr. Nellis’s simple possession of property that is illegal, not from the use of the property per se. As such it is a police power regulation, not a zoning regulation, such that nonconforming use law should not even apply. The keeping of prohibited animals is a violation of ordinance not under the city’s land use title, but under the animal control title, which applies citywide. Third, Mr. Nellis’s use may have changed over time, such that what might have once been a lawful use at some point became unlawful simply because of its increased intensity.

A case in point as to the possession of contraband outlawing a business is *State v. Howard*, 360 N.W.2d 637 (Minn. App. 1985), where the City of Plymouth passed an ordinance banning the keeping of wild animals. Howard contended his business, which predated the ordinance, was a legal nonconforming use. The court had no trouble upholding Plymouth’s prosecution of Howard for possessing wild animals after the effective date of the ordinance change, reasoning that the state would otherwise be forever barred from prosecuting possession offenses simply because they had been possessed prior to the effective date of the ordinance.

Furthermore, there are many other situations where possession of materials which had previously been legal have become contraband. Famously, the possession and sale of alcohol was banned nationwide during the Prohibition era; more recently, synthetic marijuana substances have been banned by Duluth ordinance and later state law, impacting and, in some cases bankrupting businesses that had previously sold them legally. Claims in such cases that possession can be “grandfathered in” are routinely denied. *See State v. Schuler*, No. C9-96-1047 (Minn. App. February 25, 1997, 1997 WL 76337)(limitation on number of dogs lawfully ended a kennel operation after the effective date of the ordinance).

Irrespective of the keeping of illegal snakes, Mr. Nellis neither can claim that his home occupation per se was somehow “grandfathered in.” As previously discussed, Mr. Nellis’s operation, even if it did not include prohibited snakes, would not meet the “clearly incidental test,” a requirement that has been in place in some form since at latest February 8, 1976 in the City, well before Mr. Nellis resided there. Moreover, Mr. Nellis’s home occupation has never been checked for compliance before the violation date of October 26, 2011. So it is impossible to determine if his operation *ever was* legal under City Code. Finally, the character of even a legal home occupation can change. This may have begun as a small occupation, with minimal impacts on the home or its residential character. The business has obviously grown such that, at some

point in time, it became in violation. For these reasons, the mere fact that Mr. Nellis has been operating the business under the City's radar for some period of time does not legitimize it.

B. Rational Basis for Ordinance.

Mr. Nellis also contends that it is unreasonable to include a number of the snakes he raises in the City's list of banned animals. While the Board may interpret the application of City Code, it may not determine the validity of an ordinance. The argument is, however, being addressed here in case of an appeal. The Board should know that it is Mr. Nellis who has the burden of proving an ordinance unreasonable. He must demonstrate that the ordinance has "no substantial relationship to public health, safety, or welfare." *Shuler, id.* Legislation will be upheld so long as it serves to promote a public purpose, is not unreasonable, arbitrary, or capricious, and the means chosen has a rational relation to the public purpose sought to be served. *Vier v. City of Woodbury*, No A11-1948 (Minn. App. May 14, 2012, 2012 WL 1658932). If it is at least debatable that an ordinance is reasonable, it must be upheld. *Reinke, id.*

In this case, the public purpose is clear. The City has shown that the animals involved at least require sophisticated and special handling to be safely controlled. Some of the animals involved are large, require special diets, and produce waste that must be specially handled not to impact the neighborhood. Some are destructive and can be hazardous to humans if not properly managed. While it is possible that the animals can be safely managed, a city has the right to ban them altogether rather than allow their possession. Numerous cities throughout the state and country have similar bans.

Likewise, a city may regulate the numbers of animals if it wishes. A case in point is *Reinke, supra*, where another kennel operation was essentially put out of business after the city limited the number of dogs that a residence could have. Reinke was ticketed for having too many dogs after the effective date of the ordinance. The ordinance was upheld, the court there having no trouble finding the regulation reasonably related to protecting the public health, safety, and welfare. It did not matter that Reinke claimed he could handle the increased number of dogs, the court ruled the city had broad discretion in drawing lines in furtherance of public health, safety, and welfare.

C. Change of Use After Citation Date.

City Code allows violators to come into compliance to avoid sanctions. In fact, several outdoor storage issues on the Nellis property were abated, and those citations were dismissed. That process of "coming into compliance" is available, however, only to persons who do not wish to contest the violations, which is not the case here. As such, the only matter before the Board is whether Mr. Nellis was in violation of City Code on October 26, 2011.

Even if changes have been made, the City has no way at present to verify them. As will be noted in testimony, City officials went to the Nellis property in the Spring of 2012, where they found conditions had not changed since the original inspection. Mr. Nellis himself, in later dialog with the City, alleged nothing had changed, and because of that refused the City's request to re-inspect the property when City officials suspected Mr. Nellis might allege some kind of change

at this hearing. Therefore the City urges the Board to find immaterial any evidence about changed conditions following October 26, 2011. If Mr. Nellis were genuine about his claims of compliance, he could admit the violations and request an inspection after complying with the Board's order.

III. Remedy

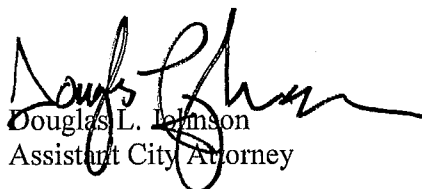
City Code provides for a \$300 civil penalty for violations, and requires compliance when a violation is found or admitted. The City suggests that a "25% square footage" rule is appropriate, and even generous absent a rigid definition what constitutes a "clearly incidental" accessory home occupation. The burden of the Code is clear: not *only* must the use be incidental to the principal use of the property, but it must be *clearly* so. In this case, an argument could be made that the home occupation is *clearly not* incidental to the principal use. In any event, the City Code provision is undeniably not met.

Finally, the City contends a "1 part per million" ammonia standard is reasonable, based on the testimony and opinions of the experts. Clearly, the amount of ammonia inside the premises made just being there nearly impossible for persons who entered it. Reducing that amount seemed appropriate as a factor in complying with the "clearly incidental" requirement.

IV. Conclusion

Based on the foregoing, the City requests the Board affirm both of the citations, and order compliance as directed, with a reasonable date of compliance before re-inspection.

Respectfully submitted,

 20 November 2012
Douglas L. Johnson
Assistant City Attorney

Not Reported in N.W.2d, 2012 WL 1658932 (Minn.App.)
(Cite as: 2012 WL 1658932 (Minn.App.))

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS
UNPUBLISHED AND MAY NOT BE CITED EX-
CEPT AS PROVIDED BY MINN. ST. SEC.
480A.08(3).

Court of Appeals of Minnesota.
Brad VIER, Appellant,
v.
CITY OF WOODBURY, Respondent.

No. A11-1948.
May 14, 2012.

Washington County District Court, File No.
82-CV-10-7417.

Beau D. McGraw, McGraw Law Firm, P.A., Lake
Elmo, MN, for appellant.

Paul A. Merwin, League of Minnesota Cities, St. Paul,
MN, for respondent.

Considered and decided by KLAPHAKE, Presiding
Judge; STONEBURNER, Judge; and CLEARY,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge.

*1 In this declaratory judgment action involving appellant Brad Vier's outdoor wood-fired boiler (OWB), appellant challenges the district court's grant of summary judgment to respondent City of Woodbury. Appellant argues that the district court erred because (1) factual issues exist as to whether the city's ordinance specifically identifying OWBs as nuisances was validly enacted, and (2) the factual dispute over whether appellant installed his OWB in reliance on the city's assurances that the OWB complied with city ordinances is material to whether the city can be equitably estopped from enforcing its ordinance. We conclude that the district court did not err by granting summary judgment for the city because (1) appellant's OWB caused a nuisance under the nuisance ordinance in effect when appellant installed the OWB, and the subsequently amended ordinance naming OWBs as nuisances was validly enacted, and (2) appellant did

not establish the elements of equitable estoppel. We affirm.

DECISION

The district court "shall" grant summary judgment if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. We review the district court's decision to grant summary judgment to determine whether there are any genuine issues of material fact and whether the district court erred in its application of the law. STAR Ctrs., Inc. v. Faegre & Benson, L.L.P., 644 N.W.2d 72, 77 (Minn.2002). In doing so, we view the evidence in the light most favorable to the party against whom summary judgment was granted. J.E.B. v. Danks, 785 N.W.2d 741, 746 (Minn.2010).

Appellant installed and began using an OWB on his Woodbury property in the fall of 2008. In December 2008, several adjoining property owners complained to the city that a significant amount of smoke from appellant's OWB was intruding into their homes. In January 2009, city inspectors observed "significant clouds of smoke" in the area around appellant's home and a neighboring home "filled with smoke" from appellant's OWB. The city advised appellant that his OWB created a nuisance, a violation of Woodbury, Minn. City Ordinance (WCO) § 15-2(b)(30) (2008), which provided that "[o]dors, gases, steam, vapor, hot air, grease, smoke, or other gaseous or particulate wastes shall not be discharged upon abutting, adjacent, or surrounding properties."

The city amended its nuisance ordinance in October 2009 to provide:

(b) The following are nuisances affecting health, safety, comfort or repose: ...

(31) Installing or operating of an outdoor wood boiler. "Outdoor wood boiler" means a fuel burning device that is designed for outdoor installation or installation in structures not normally occupied by humans to heat building space and/or water via the

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distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

*2 WCO § 15-2(b)(31) (2009). The district court subsequently granted summary judgment for the city in appellant's declaratory judgment action to continue operation of his OWB.

Nuisance Ordinance

Appellant argues that he should be permitted to continue operating his OWB because the city's 2009 amendment specifically naming OWBs as nuisances is unconstitutional. We disagree. Regardless of the constitutionality of the city's 2009 nuisance amendment, appellant's OWB violates the 2008 nuisance ordinance, which was in effect when he installed and began to use his OWB in fall 2008, and which controls his use of the OWB. The record establishes that appellant's OWB emitted significant amounts of smoke that infiltrated neighboring homes. This violates the nuisance ordinance's prohibition against discharging smoke onto "abutting, adjacent, or surrounding properties." WCO § 15-2(b)(30). Thus, appellant's OWB caused a nuisance when it was erected and continues to violate the nuisance ordinance, regardless of the validity of a subsequent amendment naming OWBs as nuisances.

Moreover, we find no merit to appellant's contention that the 2009 amendment is a constitutionally impermissible exercise of legislative authority. "Legislation is constitutional so long as it serves to promote a public purpose; is not unreasonable, arbitrary, or capricious interference with a private interest; and the means chosen bear a rational relation to the public purpose sought to be served." Arcadia Dev. Corp. v. City of Bloomington, 552 N.W.2d 281, 288 (Minn.App.1996), review denied (Minn. Oct. 29, 1996). Legislation that is not based on a suspect class and does not infringe on a fundamental right "need only be rationally related to a legitimate governmental purpose in order to withstand" constitutional challenges. *Id.* A municipal ordinance is presumed to be constitutional, and the party challenging the ordinance bears the burden of establishing that the ordinance is unreasonable or that the requisite public interest is not involved. City of St. Paul v. Dalsin, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955). "[E]xcept in those rare cases in which the city's decision has no rational basis, it is the duty of the judiciary to exercise restraint

and accord appropriate deference to civil authorities in the performance of their duties." Swanson v. City of Bloomington, 421 N.W.2d 307, 313 (Minn.1988) (quotation omitted).

The city council amended the nuisance ordinance to expressly prohibit OWBs, pursuant to its authority under Minn.Stat. § 412.221, subd. 23 (2008), "to define nuisances and provide for their prevention or abatement." The city developed a substantial record and articulated clear reasons for its decision to prohibit OWBs as nuisances. To show that the nuisance ordinance was rationally related to the legitimate public purpose of protecting the air quality and public health in Woodbury, the city submitted to the district court three lengthy reports with supporting documentation finding that OWBs emit significant smoke and particulate matter in the normal course of their operation, OWB emissions pose a significant public health concern, OWB use is increasing, and OWBs are not widely regulated. This record establishes that the city categorized OWBs as nuisances based on evidence that OWBs can pose a risk to public health and air quality.

*3 The purpose of protecting air quality and public health falls squarely within municipal authority over the health, safety, and general welfare of its citizens. See State v. Crabtree Co., 218 Minn. 36, 40, 15 N.W.2d 98, 100 (1944) (observing that municipalities have wide discretion to use legislative police power to abate public nuisances). Because prohibiting OWBs as nuisances is directly relevant to the governmental objective of protecting air quality and public health, the city's ordinance is constitutional. See Arcadia Dev. Corp., 552 N.W.2d at 288 (stating that legislation fails rational-basis review only when it rests on grounds that are irrelevant to the achievement of a plausible governmental objective).

Appellant argues that the manner and timing of the city's ordinance raises a fact question as to whether the ordinance furthers a legitimate public purpose, arguing that the city council specifically targeted him by its passage of this ordinance. Appellant relies on a statement in an April 2009 report to the city council: "One OWB was installed in the City in November 2008 without a building permit by an unlicensed contractor. Removal was required through the City's nuisance ordinance, but the installation shows local interest in these units." But this statement does not

Not Reported in N.W.2d, 2012 WL 1658932 (Minn.App.)
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undermine the legitimate governmental purpose underlying the ordinance. The record reflects that the ordinance was passed as part of a comprehensive plan initiated by the city council in late 2008 to regulate alternative energy sources, including OWBs. The development of the city's comprehensive plan lasted for more than a year and preceded the city's January 2009 identification of appellant's OWB as a nuisance. The evidence is insufficient to establish that appellant was targeted and that the ordinance was not enacted in good faith.

The district court also properly determined that appellant may not continue the **nonconforming use**. "A vested interest cannot be asserted against [the police power] because of conditions once obtaining. To so hold would preclude development and fix a city forever in its primitive conditions." *Hadachenk v. Sebastian*, 239 U.S. 394, 410, 36 S.Ct. 143, 145 (1915). Appellant may not continue a use that does not conform to an ordinance that is validly enacted pursuant to a municipality's police power. *See id.* (holding that brickmaker whose business predated city ordinance prohibiting brickmaking in designated areas could not continue operations in a designated area). Because the ordinance identifying OWBs as prohibited nuisances was a valid exercise of statutory authority, and because appellant's OWB violated the nuisance ordinance even before the ordinance specified OWBs as nuisances, the district court did not err by concluding that the ordinance prohibits appellant's continuing use of an OWB.

Equitable Estoppel

Appellant also contends that the district court erred by concluding that any factual dispute over whether city employees advised appellant that his OWB would comply with city ordinances is immaterial to resolution of the case. Appellant maintains that the factual dispute is material to the question of whether the city should be estopped from prohibiting him from using his OWB because he acted in reliance on the city's advice when he installed his OWB.

*4 Equitable estoppel is "intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights." *Brown v. Minn. Dep't of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn.1985) (quotation omitted). A party seeking to establish equitable estoppel against a governmental entity must establish all four of the following elements:

(1) "wrongful conduct" by an authorized government agent, (2) the party seeking equitable relief reasonably relied on the wrongful conduct, (3) the party incurred a unique expenditure in reliance on the wrongful conduct, and (4) the balance of equities weighs in favor of estoppel. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 25 (Minn.2011).

"Wrongful conduct" requires some degree of malfeasance or affirmative misconduct. *Id.*; *AAA Striping Servs. Co. v. Minn. Dep't of Transp.*, 681 N.W.2d 706, 720 (Minn.App.2004). Malfeasance by a government official refers to "evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful." *Jacobson v. Nagel*, 255 Minn. 300, 304, 96 N.W.2d 569, 573 (1959) (quotation omitted). "[S]imple inadvertence, mistake, or imperfect conduct" does not establish "wrongful conduct" and "an erroneous government action is not necessarily 'wrongful.'" *Sarpal*, 797 N.W.2d at 25 (quotation omitted); *see, e.g., Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. Cnty. of Itasca*, 258 N.W.2d 877, 880 (Minn.1977) (holding erroneous tax advice made in good faith insufficient to establish equitable estoppel against government). Rather, "wrongful conduct" requires "some degree of malfeasance." *Id.*

In support of his claim, appellant submitted an affidavit in which he states that city staff informed him "that it was in fact legal for [him] to install a wood burning stove on [his] property and [he] would not need a permit prior to installing the stove." Appellant claimed that, after receiving this advice, he "felt confident that [he] was legally allowed to put a wood stove on [his] property and that [he] did not need to obtain a permit so [he] proceeded to purchase the stove and had it installed." Respondent disputes this, claiming that city employees have no recollection or record of advising appellant that he could construct the OWB.

Viewing the evidence in the light most favorable to appellant, and assuming that the city so advised appellant before he installed the OWB, such advice does not rise to the level of malfeasance or illegal conduct. The record contains no evidence that the city intended to deceive appellant or induce him to install the OWB in violation of city ordinances. In the absence of evidence that would support the conclusion

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that the city acted culpably, any erroneous information provided by city employees before appellant installed his OWB constitutes only a "simple mistake." Accordingly, there is insufficient evidence to create a material fact question as to whether the city exhibited wrongful conduct.

*5 Moreover, city ordinances regulating permitting and nuisances were publicly available. Had appellant consulted the city code before installing his OWB, he could have identified contradictions between the code and the information city employees allegedly provided. Therefore, we question whether appellant's reliance on the alleged advice of city employees was reasonable.

Because the record lacks evidence to support the first element necessary to establish equitable estoppel, the district court did not err by concluding that estoppel was not an available means of relief as a matter of law.^{FN1} Because estoppel is was not available relief and the city's validly enacted ordinance prohibits appellant's continuing use of his OWB, the district court did not err by granting summary judgment for the city.

^{FN1}. Appellant also argues that public policy favors allowing city residents to pursue the use of alternative sources of energy. But appellant identifies no error of the district court for this court to review, and the record reflects that appellant did not present this argument to the district court. Accordingly, we decline to consider appellant's public policy argument. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988) (stating that an appellant court generally will not consider matters not argued to and considered by the district court); *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn.1988) (stating that the court of appeals is an error-correcting court).

Affirmed.

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C

Court of Appeals of Minnesota.
STATE of Minnesota, Appellant,
v.
Jeffrey S. HOWARD, Respondent.

No. C7-84-1087.
Jan. 15, 1985.

State charged defendant with violating public nuisance ordinance and ordinance prohibiting keeping of wild **animals** in city. The Hennepin County Municipal Court, John W. Borg, J., dismissed wild **animal** ordinance and public nuisance charges as violations of ex post facto doctrine and statute providing that if person's conduct constitutes more than one offense under laws of state, he may be punished for only one of offenses and conviction or acquittal of any one of them is a bar to prosecution for any other of them, and the State appealed. The Court of Appeals, Parker, J., held that: (1) ex post facto doctrine did not bar prosecution of defendant for conduct occurring after enactment of ordinance prohibiting the keeping of wild **animals** in city, and (2) the State would be barred from prosecuting defendant for violating public nuisance ordinance after he was acquitted of violating zoning ordinance, if upon remand, trial court found both charges arose out of operation of game farm and substantially the same facts or circumstances existed as when first offense was charged.

Reversed in part and remanded in part.

Popovich, C.J., filed a dissenting opinion.

West Headnotes

[1] Criminal Law 110 ⚡ 1141(2)

110 Criminal Law
110XXIV Review
110XXIV(M) Presumptions
110k1141 In General
110k1141(2) k. Burden of Showing
Error. Most Cited Cases

In criminal prosecution, the state must demonstrate clearly and unequivocally that trial court has erred in its judgment and that, unless reversed, error will have critical impact on outcome of trial. 49 M.S.A., Rules Crim.Proc., Rule 28.01 et seq.

[2] Constitutional Law 92 ⚡ 2790

92 Constitutional Law
92XXIII Ex Post Facto Prohibitions
92XXIII(A) Constitutional Prohibitions in General
92k2790 k. Punishment in General. Most Cited Cases
(Formerly 92k203)

An ex post facto law is one which renders an act punishable in a manner in which it was not punishable when it was committed. M.S.A. Const. Art. 1, § 11; U.S.C.A. Const. Art. 1, § 10, cl. 1.

[3] Animals 28 ⚡ 3.5(9)

28 Animals
28k3.5 Regulation in General
28k3.5(9) k. Prosecutions and Proceedings; Review. Most Cited Cases
(Formerly 92k203)

Constitutional Law 92 ⚡ 2802

92 Constitutional Law
92XXIII Ex Post Facto Prohibitions
92XXIII(B) Particular Issues and Applications
92k2801 Particular Offenses
92k2802 k. In General. Most Cited Cases
(Formerly 92k203)

Ex post facto doctrine did not bar prosecution for conduct occurring after enactment of ordinance prohibiting keeping of wild **animals** in city, even though defendant's course of conduct originated before ordinance was passed and conduct was continuous. M.S.A. Const. Art. 1, § 11; U.S.C.A. Const. Art. 1, §

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10, cl. 1.

[4] Criminal Law 110 ⚡ 29(1)

110 Criminal Law

110I Nature and Elements of Crime

110k29 Different Offenses in Same Transaction

110k29(1) k. In General. Most Cited Cases
(Formerly 110k29)

Sentencing and Punishment 350H ⚡ 509

350H Sentencing and Punishment

350HIII Sentence on Conviction of Different Charges

350HIII(A) In General

350Hk508 Single Transaction or Course of Conduct

350Hk509 k. In General. Most Cited Cases
(Formerly 110k984(2))

Statute providing that if person's conduct constitutes more than one offense under laws of state, he may be punished for only one of offenses and conviction or acquittal of any one of them is a bar to prosecution for any other of them applies to all criminal prosecutions, including municipal ordinance violations. M.S.A. § 609.035.

[5] Criminal Law 110 ⚡ 29(1)

110 Criminal Law

110I Nature and Elements of Crime

110k29 Different Offenses in Same Transaction

110k29(1) k. In General. Most Cited Cases
(Formerly 110k29)

Sentencing and Punishment 350H ⚡ 513

350H Sentencing and Punishment

350HIII Sentence on Conviction of Different Charges

350HIII(A) In General

350Hk508 Single Transaction or Course of Conduct

350Hk513 k. Identity of Intent or Objective. Most Cited Cases

(Formerly 110k984(2))

Test for determining whether conduct is unitary or divisible, under statute providing if person's conduct constitutes more than one offense under laws of state, he may be punished for only one of offenses and conviction or acquittal of any one of them is a bar to prosecution for any other of them, differs depending on whether criminal intent is an essential element of the offense. M.S.A. § 609.035.

[6] Criminal Law 110 ⚡ 1181.5(1)

110 Criminal Law

110XXIV Review

110XXIV(U) Determination and Disposition of Cause

110k1181.5 Remand in General; Vacation

110k1181.5(1) k. In General. Most Cited Cases

In prosecution for violation of city ordinance prohibiting keeping of wild animals in city and public nuisance ordinance, since allegations that conditions at wild game farm had deteriorated so that neighbors were bothered by odors emanating from farm, that nature of the game farm had changed, and that some animals had escaped from farm were not brought to trial court's attention before it dismissed State's public nuisance charge, remand was required.

[7] Double Jeopardy 135H ⚡ 139.1

135H Double Jeopardy

135HV Offenses, Elements, and Issues Foreclosed

135HV(A) In General

135Hk139 Particular Offenses, Identity of

135Hk139.1 k. In General. Most Cited Cases
(Formerly 135Hk139, 110k200(1))

The State would be barred from prosecuting individual for violating public nuisance ordinance after he was acquitted of violating zoning ordinance if it were found on remand that both charges arose out of operation of wild game farm and substantially the same facts or circumstances existed as when the first offense was charged. M.S.A. § 609.035.

**638 Syllabus by the Court*

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1. The ex post facto doctrine does not bar prosecution of an individual for conduct occurring after enactment of a statute prohibiting the conduct, even though the course of conduct originated before the law was passed and was continuous.

2. The State is barred by Minn.Stat. § 609.035 from prosecuting an individual for violating a public nuisance ordinance after he was acquitted of violating a zoning ordinance when both charges arose out of the operation of a game farm if substantially the same facts or circumstances exist as when the first offense was charged.

Hubert H. Humphrey, III, Atty. Gen., St. Paul, Herbert Lefler, Plymouth City Atty., Michael A. Nash, LeFevere, Lefler, Kennedy, O'Brien & Drawz, Minneapolis, for appellant.

C. Paul Jones, Minn. State Public Defender, Minneapolis, for respondent.

Heard, considered and decided by POPOVICH, C.J., and PARKER and SEDGWICK, JJ.

OPINION

PARKER, Judge.

Respondent Jeffrey Howard has owned a game farm in Plymouth, Minnesota, since March 1982. In May 1982 Plymouth passed an ordinance prohibiting the keeping of wild **animals** in the city and subsequently notified Howard that he must remove his **animals**. Howard succeeded in enjoining enforcement of the ordinance while he contested its constitutionality. In the meantime he was prosecuted for violating a zoning ordinance by operating the game farm and was acquitted. After a district court found the "wild **animal** ordinance" constitutional, the State charged Howard with violating it and a public nuisance ordinance.

In response to Howard's pretrial motions, the trial court dismissed the "wild **animal** ordinance" and public nuisance charges as violations of the ex post facto doctrine and Minn.Stat. § 609.035 (1982), respectively. We reverse in part and remand in part.

FACTS

Jeffrey Howard moved onto property in Plymouth, Minnesota, in March 1982 and began raising wild **animals** for sale as exotic **pets**. Many different **animals** are kept on the property, including cougars,

wolves and foxes.

Subsequently the city received several complaints from Howard's neighbors about the safety of his operation. On May 17, 1982, the Plymouth City Council adopted Ordinance No. 82-14 prohibiting the keeping of **animals** "wild by nature" in the city (the "wild **animal** ordinance"). Plymouth City Code ch. IX, § 915.23 (1982). On May 19, 1982, Howard was notified that he must remove all wild **animals** on his property by June 1, 1982. Howard obtained a temporary injunction enjoining Plymouth from *639 enforcing the ordinance until a trial on the merits could be held.

In August 1982 Howard was charged in Hennepin County Municipal Court with violating Plymouth zoning ordinance § 7, subdivision C, by operating a business on premises zoned "Future Restricted Developments" without obtaining a conditional use permit. In May 1983 Howard was acquitted.

In July 1983 the Plymouth "wild **animal** ordinance" was found constitutional, and the temporary injunction was quashed.

Following the execution of a search warrant at Howard's premises in September 1983, Howard was again charged in Hennepin County Municipal Court with six violations of the Plymouth City Code, including public nuisance and harboring a wild **animal**.

In response to Howard's pretrial motion, the trial court dismissed the harboring a wild **animal** charge on the ground it operated as an ex post facto law and dismissed the public nuisance charge under Minn.Stat. § 609.035 (1982).

ISSUES

1. Does the ex post facto doctrine bar Howard's prosecution for post-enactment violations of the "wild **animal** ordinance" when his violative conduct originated before enactment and was continuous?

2. Does Minn.Stat. § 609.035 bar Howard's prosecution for violating a public nuisance ordinance after he was acquitted of violating a zoning ordinance, when both charges arose out of his operation of a game farm?

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DISCUSSION

[1] The State appeals pursuant to Rule 28 of the Minnesota Rules of Criminal Procedure. The State must demonstrate “clearly and unequivocally that the trial court has erred in its judgment and that, unless reversed, the error will have a critical impact on the outcome of the trial.” *State v. Kline*, 351 N.W.2d 388, 390 (Minn.Ct.App.1984) (quoting *State v. Webber*, 262 N.W.2d 157, 159 (Minn.1977)).

I

[2] Both the United States and Minnesota Constitutions prohibit the passing of ex post facto laws. See U.S. Const. art. I, § 10, cl. 1; Minn. Const. art. I, § 11. An ex post facto law is “one which renders an act punishable in a manner in which it was not punishable when it was committed.” *Starkweather v. Blair*, 245 Minn. 371, 386, 71 N.W.2d 869, 879 (1955). In *Starkweather* the court quoted the leading case, *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390, 1 L.Ed. 648 (1778), regarding the meaning and intention of the prohibition:

[T]hat the Legislatures of the several states, shall not pass laws, after a fact done by a subject, or citizen, which shall have relation to such fact, and shall punish him for having done it. The prohibition considered in this light, is an additional bulwark in favour of the personal security of the subject, to protect his person from punishment by legislative acts, having a retrospective operation.

Starkweather at 387, 71 N.W.2d at 880 (emphasis deleted).

[3] Howard argues and the trial court ruled that because the “wild animal ordinance” was passed after Howard began operating his game farm and because his operation was a continuous course of conduct, the ordinance operates as an ex post facto law as applied to him. The State contends the ex post facto doctrine is not applicable because it is only prosecuting Howard for conduct occurring after the ordinance was adopted.

Samuels v. McCurdy, 267 U.S. 188, 45 S.Ct. 264, 69 L.Ed. 568 (1925), supports the State's position. In *Samuels* the plaintiff's liquor supply was seized pursuant to a Georgia statute that made it illegal for an individual to keep intoxicating beverages for any purpose. In an action to recover the liquor and prevent its destruction the plaintiff argued that the law under

which the liquor was seized was an ex post facto law because it was passed after he lawfully *640 acquired the liquor, which he continuously possessed thereafter. The Supreme Court found:

This law is not an ex post facto law. It does not provide a punishment for a past offense. It does not fix a penalty for the owner for having become possessed of the liquor. *The penalty it imposes is for continuing to possess the liquor after the enactment of the law.* It is quite the same question as that presented in *Chicago & Alton R. Co. v. Tranbarger* * *. There a Missouri statute required railroads to construct water outlets across their rights of way. The railroad company had constructed a solid embankment twelve years before the passage of the act. The railroad was penalized for noncompliance with the statute. This court said:

“The argument that in respect to its penalty feature the statute is invalid as an ex post facto law is sufficiently answered by pointing out that plaintiff in error is subjected to a penalty not because of the manner in which it originally constructed its railroad embankment, nor for anything else done or omitted before the passage of the act of 1907, but because after that time it maintained the embankment in a manner prohibited by that act.”

Id. 267 U.S. at 193, 45 S.Ct. at 265 (emphasis added). Accord *United States v. Alvarado-Soto*, 120 F.Supp. 848 (S.D.Cal.1954); *State v. Bernhard*, 173 Mont. 464, 568 P.2d 136 (1977).

The principle espoused in *Samuels* is equally applicable to this case. In both cases individuals began a course of conduct before a statute was enacted that rendered the conduct illegal. Subsequently the individuals were prosecuted for the same conduct committed after enactment even though their course of conduct was continuous.

The policy underlying this principle is sound because otherwise the State would be prevented from enforcing, through the criminal process, any laws that change the legality of conduct that had previously been conducted and was of a continuous nature.

Howard argues that *Samuels* and *Bernhard* are distinguishable because those cases did not involve a statute applying solely to one individual at the time of

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its enactment. The constitutionality of a law of general applicability is not determined by the number of people affected by it. See Tepel v. Sima, 213 Minn. 526, 536, 7 N.W.2d 532, 537 (1942). Moreover, in Starkweather v. Blair the Minnesota Supreme Court stated:

We have frequently held that the motives of the legislative body in enacting any particular legislation are not the proper subject of judicial inquiry. * * * As long as the legislature does not transcend the limitations placed upon it by the constitution, its motives in passing legislation are not the subject of proper judicial inquiry.

245 Minn. at 379-80, 71 N.W.2d at 875-76 (footnote omitted). In Howard v. City of Plymouth, D.C. File No. 791692 (Hennepin Cty. Dt. Ct. July 14, 1983), the court concluded that Plymouth had the authority to pass the "wild animal ordinance," a law of general applicability, and that the ordinance did not violate any state statutes or constitutional provisions. Specifically, the court ruled that the ordinance was not an unlawful taking without compensation, and the parties did not appeal that case. Thus, that challenge is not properly before us; similarly, Plymouth's motives in passing the law do not affect the outcome in this case.

Howard also makes an equitable argument that Plymouth would be precluded from eliminating his pre-existing business without invoking eminent domain if this were a civil zoning proceeding, see Hooper v. City of St. Paul, 353 N.W.2d 138, 140 (Minn.1984); therefore, it would be unjust to allow Plymouth to achieve the same end by use of a criminal prosecution. The probable outcome of a prosecution for a zoning violation is irrelevant to this action, which seeks to enforce an ordinance adopted to protect the public health and *641 welfare. Therefore, we hold that prosecution of Howard under Plymouth city ordinance 82-14, the "wild animal ordinance," does not violate the ex post facto doctrine.

II

The trial court dismissed the State's public nuisance charge under Minn.Stat. § 609.035 (Supp.1983), which provides:

[I]f a person's conduct constitutes more than one offense under the laws of this state, he may be

punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

(Emphasis added).

[4] The protection of Minn.Stat. § 609.035 applies to all criminal prosecutions including municipal ordinance violations. State v. White, 300 Minn. 99, 102-03, 219 N.W.2d 89, 91 (1974); see also City of St. Paul v. Whidby, 295 Minn. 129, 144, 203 N.W.2d 823, 832 (1972).

Under the statute, "if two offenses * * * are committed in a unitary course of criminal conduct, then the state should join the * * * prosecution[s] in a single prosecution * * *." State v. Zuehlke, 320 N.W.2d 79, 81 (Minn.1982) (citing State v. Reiland, 274 Minn. 121, 142 N.W.2d 635 (1966)). See also State v. Krech, 312 Minn. 461, 252 N.W.2d 269, 274 (1977). The "underlying policy [of the statute] is to protect an accused from being unduly harassed by repeated prosecutions for the same conduct until a desired result is accomplished." State v. Johnson, 273 Minn. 394, 400, 141 N.W.2d 517, 522 (1966) (footnote omitted).

[5] The test for determining whether conduct is unitary or divisible differs depending on whether criminal intent is an essential element of the offenses. In State v. Zuehlke the court said:

The approach which we have followed under section 609.035 in determining whether nonintentional crimes * * * were part of the same course of conduct is to analyze the facts and determine whether the offenses "[Arose] out of a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." State v. Sailor, 257 N.W.2d 349, 352 (Minn.1977); State v. Johnson, 273 Minn. 394, 405, 141 N.W.2d 517, 525 (1966). The approach used in determining whether two or more intentional crimes were part of the same course of conduct is to focus on the factors of time and place and also to consider whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective. Id. at 404, 141 N.W.2d at 525.

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320 N.W.2d at 81-82 (emphasis added).

In this case, the trial court found intent was not a factor in the crimes charged. Therefore, the broader test articulated in *State v. Sailor* applies. The State argues the statute does not apply to this case because Howard is being prosecuted now for conduct which occurred on September 28, 1983, whereas the zoning ordinance prosecution was for conduct which occurred in 1982. Thus, the State emphasizes the element of time in the conduct. However, the broader test de-emphasizes the importance of the time element in determining whether two offenses were part of the same course of conduct. Instead, the emphasis lies in the continuous nature of the conduct indicating a single state of mind.

[6][7] The trial court ruled Howard's conduct in running the game farm represented a continuing and uninterrupted course of conduct and an indivisible state of mind which could have resulted in both zoning and nuisance ordinance charges in 1982 when the State charged only the zoning violation. If this is correct, Minn.Stat. § 609.035 bars Howard's prosecution for public nuisance.

However, at oral argument the State argued Howard's course of conduct in 1982 and 1983 was not the same. The State argued, outside the record, that the nature of Howard's game farm had changed because*642 some animals that were babies at the time of the 1982 complaint had grown. The State also claimed some of Howard's animals had escaped from the farm. Howard denied this allegation. There was also the suggestion that conditions at the farm had deteriorated so that neighbors were bothered by odors emanating from the farm.

It appears these allegations were not brought to the trial court's attention before it dismissed the State's public nuisance charge. We believe that if different facts or circumstances exist, as alleged by the State, since the 1982 zoning ordinance charge, a public nuisance charge would not necessarily be barred by Minn.Stat. § 609.035.

DECISION

We reverse the trial court's ruling that the *ex post facto* doctrine prohibits Howard's prosecution under Plymouth's "wild animal ordinance." We remand for

findings of fact as to whether a substantial change in Howard's operation has occurred which would permit the State to bring a public nuisance charge.

Reversed in part and remanded in part.

POPOVICH, C.J., dissents.

POPOVICH, Chief Judge, dissenting.

I respectfully dissent for the following reasons:

1. On the record before this court, the trial court's conclusion that the City's prosecution of Howard for public nuisance is barred should not be overturned. The trial court found "defendant's conduct in 1982 represented a continuing and uninterrupted course of conduct, and an indivisible state of mind, which could have resulted in both zoning and nuisance charges at that time." The record before this court does not establish the trial court's finding was clearly erroneous. See Minn.R.Civ.P. 52.01.

The City may not, therefore, bring multiple prosecutions for respondent's uninterrupted course of conduct. Minn.Stat. § 609.035 (1982); see *State v. Johnson*, 273 Minn. 394, 141 N.W.2d 517 (1966).

This choice was made by the prosecution. * * * [I]f the prosecution has a problem in this case, it was of its own making. We made it clear in *State v. Reiland*, that if the state wishes to charge a defendant with more than one offense * * * it should be done in one prosecution in district court stating each offense as a separate count.

State v. Krech, 312 Minn. 461, 252 N.W.2d 269, 274 (1977) (citation omitted). The city is barred from prosecuting respondent for public nuisance by Minn.Stat. § 609.035 (Supp.1983).

2. The trial court properly dismissed the City's public nuisance charge under Minn.Stat. § 609.035, which provides:

[I]f a person's conduct constitutes more than one offense under the laws of this state, he may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All the offenses, if prosecuted, shall be included in one prosecution

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which shall be stated in separate counts.

Id. (emphasis added).

The protection of Minn.Stat. § 609.035 applies to all criminal prosecutions including municipal ordinance violations. *State v. White*, 300 Minn. 99, 102-03, 219 N.W.2d 89, 91 (1974).

In *State v. Zuehlke*, 320 N.W.2d 79 (Minn.1982), the Minnesota Supreme Court said:

The approach which we have followed under section 609.035 in determining whether *nonintentional* crimes * * * were part of the same course of conduct is to analyze the facts and determine whether the offenses “[Arose] out of a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment.” The approach used in determining whether two or more *intentional* crimes were part of the same course of conduct is to focus on the factors of *time and place and also to consider whether *643 the segment of conduct involved was motivated by an effort to obtain a single criminal objective.*

Id. at 81-82 (emphasis added; citations omitted).

The trial court ruled Howard's conduct in running the game farm represented a continuing and uninterrupted course of conduct and indivisible state of mind. This being so, Minn.Stat. § 609.035 (Supp.1983) bars Howard's prosecution for public nuisance.

3. The City's wild **animal** ordinance operates as a bill of attainder and as an *ex post facto* law. The United States Constitution provides:

No State shall * * * pass any Bill of Attainder [or] *ex post facto* Law * * *.

U.S. Const. art. 1, § 10; see Minn. Const. art. 1, § 11.

“A bill of attainder is a legislative act which inflicts punishment without a judicial trial.” *Starkweather v. Blair*, 245 Minn. 371, 377, 71 N.W.2d 869, 874 (1955) (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 323, 18 L.Ed. 356 (1867)). “A bill

of attainder may affect the life of an individual, or may confiscate his property, or may do both.” *Fletcher v. Peck*, 10 U.S. 87, 138, 6 Cranch 87, 138, 3 L.Ed. 162 (1810). The imposition of criminal liability may operate as a bill of attainder. *United States v. Brown*, 381 U.S. 437, 450, 85 S.Ct. 1707, 1715, 14 L.Ed.2d 484 (1965).

The bill of attainder clause should be interpreted giving it effect and protecting constitutional rights. See *id.* 381 U.S. at 442-43, 447, 85 S.Ct. at 1711-12, 1714.

[T]he Bill of Attainder Clause [is] not to be given a narrow historical reading * * *, but [is] instead to be read in light of the evil the Framers had sought to bar: legislative punishment of any form or severity, of specifically designated persons or groups.

Id. at 447, 85 S.Ct. at 1714.

Here, the City has penalized respondent with criminal liability in an attempt to deprive him of his legitimate game farm business. This act of the City, admittedly and intentionally singling out respondent, is a bill of attainder and *ex post facto* in effect.

4. The wild **animal** ordinance also operates as an *ex post facto* law in this matter. “An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed.” *Starkweather*, 245 Minn. at 386, 71 N.W.2d at 879.

Much of what has already been said applies equally to a determination of whether the act involved is an *ex post facto* law. Bills of attainder historically often involve *ex post facto* laws and it probably was for that reason that they were dealt with together in framing our constitution.

Id.

The record in this matter is absolutely clear that the City enacted this ordinance for punitive purposes. The expressed purpose of singling out respondent for the purpose of destroying his business distinguishes this matter from *Samuels v. McCurdy*, 267 U.S. 188, 45 S.Ct. 264, 69 L.Ed. 568 (1925) and the other cases cited by appellants. In those matters, the laws in question were directed at groups of persons and did

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not single out a particular person for punishment. Moreover, the laws in those cases *do not present situations where a legislative body attempted to adopt criminal statutes in an attempt to expand its land use controls beyond prescribed limits.* The Plymouth wild animal ordinance is an ex post facto law because it would punish respondent for lawfully establishing a game farm prior to the adoption of the ordinance.

5. Here the City is attempting to legislate a lawfully commenced **business** out of existence. Respondent's game farm is a lawful **nonconforming use** established before the 1982 zoning ordinance was adopted. The **nonconforming use** has not been improperly expanded. Howard's conduct in operating the game farm represents a continuing and uninterrupted course of conduct and indivisible state of mind. The fact that some **animals**, which were babies at the time of the 1982 complaint, are now *644 grown is immaterial. This was an expected and proper part of the game farm operation. Matters outside the record and raised at oral argument should be ignored. They may be the subject of other appropriate proceedings, not this one.

6. The City of Plymouth may not enforce a criminal statute enacted for the specific purpose of destroying respondent's legitimate business. The City of Plymouth has attempted to avoid the clear requirements of the fifth and fourteenth amendments to the United States Constitution and avoid the expense of eminent domain proceedings by enacting this punitive law which deprives respondent of his game farm business.

Private property may not be taken for public use "without just compensation." U.S. Const. amend. V. The Minnesota Supreme Court has made clear on numerous occasions:

A residential zoning ordinance may constitutionally prohibit the creation of **uses** which are **nonconforming**, but existing **nonconforming uses** must either be permitted to remain or eliminated by use of eminent domain.

County of Freeborn v. Claussen, 295 Minn. 96, 99, 203 N.W.2d 323, 325 (1972); see Hawkins v. Talbot, 248 Minn. 549, 551, 80 N.W.2d 863, 865 (1957). "Absent a court determination that the [**business**] is a public nuisance or a nuisance per se, a

city simply cannot legislate a **business** out of existence." Apply Valley Red-E-Mix v. City of St. Louis Park, 359 N.W.2d 313, 315 (Minn.Ct.App.1984).

7. I would affirm the trial court.

Minn.App., 1985.
State v. Howard
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Not Reported in N.W.2d, 1997 WL 76337 (Minn.App.)
(Cite as: 1997 WL 76337 (Minn.App.))

H

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS
UNPUBLISHED AND MAY NOT BE CITED EX-
CEPT AS PROVIDED BY MINN. ST. SEC.
480A.08(3).

Court of Appeals of Minnesota.
STATE of Minnesota, Respondent,
v.
Bev SCHULER, Appellant.

No. C9-96-1047.
Feb. 25, 1997.
Review Denied May 20, 1997.

Appeal from Ramsey County, District Court, File No.
T595622531; George O. Peterson, Judge.
Marshall H. Tanick, Debra S. Lepert, Mansfield &
Tanick, P.A., Minneapolis, for appellant.

Paul T. Ostrow, Sweeney, Borer & Ostrow, St. Paul,
for respondent.

Considered and decided by DAVIES, P.J., and
HUSPENI and SHORT, JJ.

UNPUBLISHED OPINION

SHORT, Judge.

*1 This lawsuit arises from the enforcement of a Little Canada ordinance prohibiting the keeping of more than three adult dogs in any residential dwelling within the city's residentially zoned districts. From 1969 to the summer of 1996, Bev Schuler (Schuler) and her husband operated a home-based dog breeding and training business. When the Schulers began their business, there were no dog limitation ordinances in effect. Over the years, Little Canada's city council enacted various kennel and licensing ordinances, and, in 1985, the city council voted in favor of the dog limitation ordinance at issue in this case.

After receiving a "barking dog" complaint, city authorities inspected the Schulers' home in July of 1996. During that inspection, authorities noted the Schulers had more than three dogs and charged

Schuler with a violation of the dog limitation ordinance. Schuler moved to dismiss the charges on grounds that the ordinance was unreasonable and violated due process of law, and that Schuler's dog breeding and training business qualified under the city code as both a **nonconforming use** and a valid **home occupation**. The trial court denied Schuler's motion, concluding the ordinance was a valid exercise of the city's police power and finding the Schulers' business did not meet the definitions of **nonconforming use** or valid **home occupation**. The case went to trial on stipulated facts before a different trial court judge. Relying on the prior judge's findings as law of the case, the trial judge found Schuler guilty of violating the city's dog limitation ordinance. On appeal from her misdemeanor conviction, Schuler argues (1) the ordinance is unconstitutional, and (2) in the alternative, Schuler's business is valid as both a **nonconforming use** and a **home occupation**. We affirm.

DECISION

When a case is decided on stipulated facts, the only issue on appeal is whether the trial court erred in its application of the law. Reads Landing Campers Ass'n v. Township of Pepin, 546 N.W.2d 10, 13 (Minn.1996). We do not defer to the trial court's analysis of purely legal issues. Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn.1984). The construction of an ordinance is a question of law, which is subject to de novo review. Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604, 608 (Minn.1980).

I.

A city's police power allows it both to regulate the keeping of animals, and to define nuisances and provide for their abatement. Minn.Stat. § 412.221, subd. 21 (1996) (keeping of animals); Minn.Stat. § 368.01, subd. 15 (1996) (nuisances).

Municipal ordinances are presumptively constitutional. See In re Tveten, 402 N.W.2d 551, 556 (Minn.1987) (recognizing statutes are presumed to be constitutional). The burden of proving an ordinance unreasonable and unconstitutional rests on the party attacking its validity. Fairmont Foods Co. v. City of Duluth, 260 Minn. 323, 325, 110 N.W.2d 155, 157 (1961) (quoting State ex rel. Larson v. City of Min-

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neapolis, 190 Minn. 138, 140, 251 N.W. 121, 121 (1933)). To prove an ordinance is unreasonable, a complaining party must show the ordinance "has no substantial relationship to the public health, safety, morals or general welfare." *State v. Hyland*, 431 N.W.2d 868, 872 (Minn.App.1988) (citation omitted) (emphasis added). Where the reasonableness of an ordinance is debatable, courts will refrain from interfering with the municipality's exercise of legislative discretion. *Id.* (quoting *State v. Modern Box Makers, Inc.*, 217 Minn. 41, 47, 13 N.W.2d 731, 734 (1944)).

*2 In challenging the ordinance's constitutionality, Schuler contends there is no rational basis for the dog limitation ordinance. Schuler argues: (1) excepting a report of a small number of problems with dogs in the local trailer court, which city health officials had addressed, the city council considered no evidence, empirical or otherwise, tending to show a reasonable connection between the ordinance and its desired purpose; (2) prior to enactment of the ordinance, a city council member related that the city had not received "many complaints on parties with too many dogs," with the exception of the above-mentioned report; and (3) a veterinarian's trial testimony established that problems with dogs are not caused only by high numbers of dogs per household, but are also affected by the size and breed of the dog, and the level of care provided by the dog owner. However, a municipality is not required to show affirmatively it enacted an ordinance based on empirical, factual evidence; rather, the party challenging the ordinance must demonstrate that there is no rational relationship between the ordinance and a health or safety goal of the community. See, e.g., *Fairmont Foods*, 260 Minn. at 326, 110 N.W.2d at 157 (striking down ordinance restricting bacteria count in raw milk because testimony conclusively demonstrated no link between lower bacterial counts and public health). Schuler has failed to offer evidence that regulating the number of dogs per household is unrelated to controlling the problems of dog noise and odor as they affect the health and general welfare of the community. Thus, it is at least debatable that the dog limitation ordinance is reasonable. See *Hyland*, 431 N.W.2d at 872 (refusing to interfere with legislative discretion if reasonableness of ordinance is debatable); see, e.g., *Holt v. City of Sauk Rapids*, slip. op. at 5-6 (Minn.App. Feb. 25, 1997) (upholding dog limitation ordinance where it was debatable that limitation was substantially related to controlling problems of dog noise and odor). Under these circumstances, Schuler has not overcome the

presumption of constitutionality.

Schuler also argues the ordinance must fail because the ordinance arbitrarily chooses the number three as the maximum permissible quantity of dogs per household. Again, Schuler fails to present any facts that suggest a three-dog limitation is unrelated to public health objectives; she does not offer a method for deriving a "correct" number, or allege a different number would be preferable. Under these circumstances, we cannot say no substantial relationship exists between the ordinance and the public health or general welfare. See *id.* at 7 (refusing to overturn dog limitation ordinance merely because number was "arbitrary"); *Hyland*, 431 N.W.2d at 872 (requiring challenging party to prove ordinance is not substantially related to public health, safety, morals, or general welfare); see also *Wolff v. City of Monticello*, 803 F.Supp. 1568, 1572 (D.Minn.1992) (holding city is entitled, after determining regulation is necessary, to a reasonable opportunity to experiment with solutions to problem).

II.

*3 Notwithstanding the constitutionality of the ordinance, Schuler argues that she is entitled to continue her dog breeding and training business as a valid nonconforming use. However, the concept of "nonconforming use" has traditionally been applied only in the zoning law context. See, e.g., *Hooper v. City of St. Paul*, 353 N.W.2d 138, 140 (Minn.1984) (acknowledging fundamental principle of real property law that uses lawfully existing at time of zoning change may continue to exist until removed or otherwise discontinued).

Little Canada's zoning code provides:

[A]ny nonconforming * * * use lawfully existing upon the effective date of the ordinance * * * may be continued at the size and in the manner of operation existing upon such date * * *.

Little Canada, Minn., Mun.Code § 903.010(B) (1995). Schuler contends that the challenged ordinance has the practical effect of a zoning ordinance, and is, therefore, subject to the nonconforming use exemption. We disagree. Section 903.010(B), on its face, pertains only to zoning ordinances and does not address the larger category of ordinances generally affecting land. See *Casco Twp. v. E. Brame Trucking*

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Co., 34 Mich.App. 466, 191 N.W.2d 506, 508 (Mich.Ct.App.1971) (concluding zoning ordinances alone are subject to rights of nonconforming users where nonconforming use provision expressly relates only to zoning). Though the grant of zoning power from the state to a city is made subject to the rights of nonconforming users having rights at the time the zoning ordinance is enacted, this limitation does not apply when an ordinance is authorized under another grant of power from the state to a city. *See id.* (classifying township's soil removal ordinance as "regulatory" ordinance and refusing to subject it to nonconforming use provision of zoning code). We decline to encumber the exercise of regulatory power with nonconforming use provisions applicable on their face only to zoning ordinances.

Schuler also argues her dog breeding and training business is a valid home occupation under Little Canada, Minn., Mun.Code § 903.120 (1995). However, even if Schuler's business meets that definition, the business remains violative of the dog limitation ordinance. Under these circumstances, Schuler's argument under section 903.120 must fail.

Affirmed.

Minn.App.,1997.
State v. Schuler
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(Cite as: 702 N.W.2d 308)

C

Court of Appeals of Minnesota.
STATE of Minnesota, Respondent,
v.
Sheila Ann REINKE, Appellant.

No. A04-2219.
Aug. 23, 2005.

Background: Following a trial, defendant was convicted in the District Court, Chippewa County, Paul A. Nelson, J., of violating township zoning ordinance prohibiting three or more dogs on premises owned by any individual residing in high density population area. Defendant appealed.

Holdings: The Court of Appeals, Dietzen, J., held that:

- (1) ordinance was constitutional;
- (2) conviction did not violate constitutional prohibition against ex post facto laws; and
- (3) dog-breeding business was not a "lawfully existing" business at time that ordinance was enacted, and thus nonconforming-use exception did not apply.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ☞ 1081

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(B) Particular Matters

414k1081 k. Animals; stables and kennels.

Most Cited Cases

(Formerly 414k82, 414k76)

Township zoning ordinance that prohibited three or more dogs on premises owned by any individual residing in high density population area was constitutional; it was at least debatable that limitation of two dogs per residential premises in a high density population area protected public health. M.S.A. § 365.10, subd. 13.

[2] Municipal Corporations 268 ☞ 122.1(2)

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k122.1 Evidence

268k122.1(2) k. Presumptions and burden of proof. Most Cited Cases

Township ordinances are presumptively constitutional.

[3] Municipal Corporations 268 ☞ 122.1(2)

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k122.1 Evidence

268k122.1(2) k. Presumptions and burden of proof. Most Cited Cases

Party challenging the provision bears the burden of proving that the ordinance is unreasonable and unconstitutional.

[4] Municipal Corporations 268 ☞ 121

268 Municipal Corporations

268IV Proceedings of Council or Other Governing Body

268IV(B) Ordinances and By-Laws in General

268k121 k. Proceedings to determine validity of ordinances. Most Cited Cases

In challenge to constitutionality of an ordinance, a showing of unreasonableness requires that the challenging party prove that the ordinance has no substantial relationship to public health, safety, morals, or general welfare.

[5] Municipal Corporations 268 ☞ 63.20

268 Municipal Corporations

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268II Governmental Powers and Functions in General

268k63 Judicial Supervision

268k63.20 k. Reasonableness of ordinances.

Most Cited Cases

When deciding a challenge to the constitutionality of a township's ordinance, courts decline to interfere with a township's legislative discretion if the reasonableness of the ordinance is debatable.

[6] Municipal Corporations 268 ⚡589

268 Municipal Corporations

268X Police Power and Regulations

268X(A) Delegation, Extent, and Exercise of Power

268k589 k. Nature and scope of power of municipality. Most Cited Cases

Party challenging constitutionality of a township ordinance must prove that it is not even debatable that the challenged ordinance has any substantial relationship to public health, safety, or general welfare.

[7] Constitutional Law 92 ⚡2828

92 Constitutional Law

92XXIII Ex Post Facto Prohibitions

92XXIII(B) Particular Issues and Applications

92k2828 k. Administrative agencies and proceedings in general. Most Cited Cases
(Formerly 92k200)

Zoning and Planning 414 ⚡1776

414 Zoning and Planning

414XI Enforcement of Regulations

414k1767 Defenses to Enforcement

414k1776 k. Uses preexisting regulation.
Most Cited Cases
(Formerly 414k801)

Conviction for violation of township zoning ordinance that prohibited three or more dogs on premises owned by any individual residing in high density population area did not violate constitutional prohibition against ex post facto laws; conviction pertained to keeping three or more dogs on residential premises after ordinance was passed. U.S.C.A. Const. Art. 1, §

10, cl. 1; M.S.A. Const. Art. 1, § 11; M.S.A. § 365.10, subd. 13.

[8] Constitutional Law 92 ⚡2790

92 Constitutional Law

92XXIII Ex Post Facto Prohibitions

92XXIII(A) Constitutional Prohibitions in General

92k2790 k. Punishment in general. Most Cited Cases
(Formerly 92k203)

An "ex post facto law" renders an act punishable in a manner in which it was not punishable when it was committed. U.S.C.A. Const. Art. 1, § 10, cl. 1; M.S.A. Const. Art. 1, § 11.

[9] Constitutional Law 92 ⚡2802

92 Constitutional Law

92XXIII Ex Post Facto Prohibitions

92XXIII(B) Particular Issues and Applications

92k2801 Particular Offenses

92k2802 k. In general. Most Cited Cases
(Formerly 92k200)

If an individual began a course of conduct before a statute prohibiting the conduct was passed, she may be prosecuted for continuing the conduct after enactment of the prohibitive provision without violating protection against ex post facto laws. U.S.C.A. Const. Art. 1, § 10, cl. 1; M.S.A. Const. Art. 1, § 11.

[10] Zoning and Planning 414 ⚡1305

414 Zoning and Planning

414VI Nonconforming Uses

414k1305 k. Legality or illegality of use. Most Cited Cases
(Formerly 414k326)

Property owner's dog-breeding business was not a "lawfully existing" business at time that township enacted zoning ordinance that prohibited three or more dogs on premises owned by any individual residing in high density population area, and thus nonconforming-use exception did not apply; conditional use permit was required to operate owner's business, and owner did not apply for or receive a conditional

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use permit.

[11] Zoning and Planning 414 ☞ 1305

414 Zoning and Planning

414VI Nonconforming Uses

414k1305 k. Legality or illegality of use. Most

Cited Cases

(Formerly 414k326)

Use of land that is unlawful at its inception, but which exists when a township enacts a regulatory change, is not exempt from the change as a preexisting nonconforming use.

[12] Zoning and Planning 414 ☞ 1302

414 Zoning and Planning

414VI Nonconforming Uses

414k1302 k. Existence of use in general. Most

Cited Cases

(Formerly 414k323)

Under nonconforming-use exception, uses lawfully existing at the time of an adverse zoning change may continue to exist until they are removed or otherwise discontinued.

[13] Eminent Domain 148 ☞ 2.10(5)

148 Eminent Domain

148I Nature, Extent, and Delegation of Power

148k2 What Constitutes a Taking; Police and Other Powers Distinguished

148k2.10 Zoning, Planning, or Land Use; Building Codes

148k2.10(4) Zoning and Permits

148k2.10(5) k. In general. Most Cited

Cases

(Formerly 414k321)

Zoning and Planning 414 ☞ 1300

414 Zoning and Planning

414VI Nonconforming Uses

414k1300 k. In general. Most Cited Cases

(Formerly 414k321)

If a residential zoning ordinance prohibits a par-

ticular use of land, the existing nonconformities must be either permitted to remain or eliminated by the use of eminent domain.

[14] Municipal Corporations 268 ☞ 55

268 Municipal Corporations

268II Governmental Powers and Functions in General

268k52 Political Status and Relations

268k55 k. Relation to county. Most Cited

Cases

Township regulations are effective to the extent that they are not inconsistent with county regulations.

****310 Syllabus by the Court***

A use of land that is unlawful at its inception, but which exists when a township enacts a regulatory change, is not exempt from the change as a preexisting nonconforming use.

John E. Mack, Mack & Daby, P.A., New London, MN, for appellant.

Mike Hatch, Attorney General, St. Paul, MN; and Dwayne N. Knutsen, Chippewa County Attorney, Montevideo, MN, for respondent.

Considered and decided by TOUSSAINT, Chief Judge; KLAPHAKE, Judge; and DIETZEN, Judge.

OPINION

DIETZEN, Judge.

Appellant received a citation for violating a township ordinance prohibiting three or more dogs on the premises owned by any individual residing in the township's high density population area. Appellant challenged both the constitutionality of the ordinance and her misdemeanor conviction under it, arguing that the ordinance was unenforceable as applied to her because her dog-breeding business was exempted under the preexisting nonconforming use exception. Because appellant was not lawfully operating her dog-breeding business before the ordinance was enacted, we affirm.

FACTS

In December 2003, Chippewa County Sheriff Stacy Tufto began receiving complaints about dogs on appellant Sheila Reinke's property in Big Bend

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Township in Chippewa County. Sheriff Tufto visited the property about seven or eight times to investigate complaints. On May 12, 2004, Sheriff Tufto visited appellant's residence and observed seven dogs on the property in wire dog kennels. Sheriff Tufto issued appellant a citation for violating the township's ordinance § 1.04(B), which prohibits any homeowner from keeping three or more dogs on her property, a petty misdemeanor. The township passed the ordinance on May 9, 2004, approximately one and one-half years after appellant bought her residence. The title of the code chapter containing the ordinance is "Ordinance: A Resolution Adopting a Big Bend Township Zoning Ordinance Relating to Dogs." The ordinance states:

(B) *Kennel as a nuisance.* Because the keeping of three or more dogs on the same premises is subject to great abuse, causing discomfort to persons in the area by way of smell, noise, hazard, and general aesthetic depreciation, the keeping of three or more dogs on the premises is hereby declared to be a nuisance and no person shall keep or maintain a kennel within the a[sic] high density population area.

Appellant moved to challenge the constitutionality of the ordinance. A hearing was held, and the district court issued an order denying appellant's motion. Appellant then pleaded not guilty to the petty misdemeanor charge, again asserting that the ordinance was unconstitutional. At trial, appellant testified that she raised the dogs for sale and had always kept three or more dogs on the property. She further testified that she had checked before purchasing*311 the property to make sure there was no ordinance limiting the number of dogs per residence. She also testified that she had earned approximately \$6,000 through the business in 2003. Sheriff Tufto testified that appellant had told her previously that she did not have a dog-breeding business and was taking care of the dogs for a friend. The parties stipulated that appellant's residence is within a high density population area under the township's definitions.

In its order, the district court concluded that appellant was operating a dog-breeding business on her property and found her guilty of violating the ordinance. Appellant was sentenced to pay a \$300 fine and \$70 in surcharges. Appellant challenges her conviction.

ISSUES

I. Is the ordinance unconstitutional?

II. Does appellant's conviction violate the prohibition against ex post facto laws?

III. Should appellant be allowed to operate her business as a nonconforming use because it was in existence before the township enacted the ordinance?

ANALYSIS

On appeal, a district court's factual findings are given great deference and will not be set aside unless clearly erroneous. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn.1999). The construction of an ordinance is a question of law, which this court reviews de novo. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn.1980). Similarly, the constitutionality of a statute is a question of law, and this court is not bound by the district court's conclusions. *Holt v. City of Sauk Rapids*, 559 N.W.2d 444, 445 (Minn.App.1997), review denied (Minn. Apr. 24, 1997).

I.

Constitutionality

[1][2][3][4][5][6] Appellant argued to the district court that Big Bend's dog ordinance is unconstitutional, and the district court rejected her claim. Township ordinances are presumptively constitutional. See *In re Tveten*, 402 N.W.2d 551, 556 (Minn.1987). The party challenging the provision bears the burden of proving that the ordinance is unreasonable and unconstitutional. *Fairmont Foods Co. v. City of Duluth*, 260 Minn. 323, 325, 110 N.W.2d 155, 157 (1961). A showing of unreasonableness requires that the challenging party prove that the ordinance "has no substantial relationship to public health, safety, morals, or general welfare." *State v. Hyland*, 431 N.W.2d 868, 872 (Minn.App.1988) (emphasis added) (quotation omitted). Courts decline to interfere with a township's legislative discretion if the reasonableness of the ordinance is debatable. *Id.*; see also *Connor v. Twp. of Chanhassen*, 249 Minn. 205, 212, 81 N.W.2d 789, 795 (1957) (stating that township ordinance should be declared unconstitutional only "when there is no reason whatsoever to support the determination of the legislative body"). Thus, to prevail, an appellant must prove that it is not even debatable that the challenged ordinance has any

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substantial relationship to public health, safety, or general welfare. Holt, 559 N.W.2d at 445. Townships have the authority to “pass ... ordinance[s] for licensing dogs and cats and regulating their presence, keeping, and running at large in the town.” Minn.Stat. § 365.10, subd. 13 (2004).

The district court ruled that the township's dog ordinance is constitutional because “[i]t is at least debatable that limiting the number of dogs a person can keep on her premises serves the public interest of providing for the health and general *312 welfare of the citizens by helping to eliminate bothersome smells, noises, hazards, and aesthetic depreciation of property caused by an overabundance of dogs.” The parties stipulated that appellant's home is located in a high density population area under the ordinance's definitions.

We conclude that appellant has failed to meet her burden of proving it is not even debatable that regulating the number of dogs per residence has a substantial relationship to controlling the problems of dog noise, temperament, and odor as they affect the public health, safety, and welfare. It is at least debatable that the limitation of two dogs per residential premises in a high density population area protects public health. See Hyland, 431 N.W.2d at 872 (stating that courts should not interfere with legislative discretion if reasonableness of ordinance is debatable). Appellant has not overcome the township ordinance's presumption of constitutionality.

II.

Ex Post Facto Laws

[7][8][9] Appellant also argues that her conviction for operating her existing dog-breeding business violates the prohibition against ex post facto laws. Both the United States and Minnesota Constitutions prohibit the passage of ex post facto laws. U.S. Const. art. I, § 10, cl. 1; Minn. Const. art. I, § 11. An ex post facto law “renders an act punishable in a manner in which it was not punishable when it was committed.” Starkweather v. Blair, 245 Minn. 371, 386, 71 N.W.2d 869, 879 (1955). But if an individual began a course of conduct before a statute prohibiting the conduct was passed, she may be prosecuted for continuing the conduct after enactment of the prohibitive provision. See State v. Howard, 360 N.W.2d 637, 640-41 (Minn.App.1985) (concluding that defendant who violated wild animal ordinance both before and after it

was passed did not have ex post facto claim because conviction pertained to conduct after ordinance was passed); accord Samuels v. McCurdy, 267 U.S. 188, 193, 45 S.Ct. 264, 265, 69 L.Ed. 568 (1925) (holding that penalty imposed for continuing to possess liquor after prohibition was not ex post facto law). Accordingly, we conclude that because appellant's conviction pertains to keeping three or more dogs on her residential premises after the dog ordinance was passed, it does not violate the prohibition against ex post facto laws.

III.

Nonconforming Use

[10] Appellant also argues that even if the dog ordinance is constitutional, it is not enforceable as applied to her property due to the exception for a preexisting nonconforming use.

[11][12][13] “It is a fundamental principle of the law of real property that uses lawfully existing at the time of an adverse zoning change may continue to exist until they are removed or otherwise discontinued.” Hooper v. City of St. Paul, 353 N.W.2d 138, 140 (Minn.1984). Further, if a residential zoning ordinance prohibits a particular use of land, the existing nonconformities must be either permitted to remain or be eliminated by the use of eminent domain. *Id.* Accordingly, Minnesota statutory provisions specify that any township's zoning resolution “shall not prohibit the continuance of the use of a building for any trade or industry for which it was used when the resolution took effect or the alteration of or addition to an existing building or structure to carry on a prohibited trade or industry in the zone where it is located.” Minn.Stat. § 366.18 (2004). Big Bend Township's administrative code defines a nonconforming use as follows: “A *313 structure or the use of a structure or premises which was lawful before the adoption of this ordinance, but which is not in conformity with the provisions of this ordinance....”

Under the nonconforming use exception, the use of real property must be “lawfully existing” at the time of the zoning change. See Hooper, 353 N.W.2d at 140. Although the statutory provision relating to nonconforming uses for townships does not address the lawful-existence requirement, Big Bend's township code does mandate the lawful prior existence of the use. Cf. Connor, 249 Minn. at 214, 81 N.W.2d at 796 (noting that township's provision that the continuation

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of any *lawful* use of land existing at the time of a regulatory change was “intended to comport with” section 366.18). Here, appellant acknowledges, and the district court concluded, that she was operating a dog-breeding business in Big Bend Township’s “Urban Development District.” Big Bend Township is located in Chippewa County. Under Chippewa County’s “Urban Development District” zoning code, commercial uses are considered “conditional uses,” meaning that a conditional use permit is required to operate them lawfully. Here, there is no evidence that appellant applied for or received a conditional use permit to operate her dog-breeding business.

[14] Regarding the issue of concurrent jurisdiction, township regulations are effective to the extent that they are not inconsistent with county regulations. West Circle Props., L.L.C. v. Hall, 634 N.W.2d 238, 243 (Minn.App.2001), *review denied* (Minn. Dec. 19, 2001). Because there is no inconsistency between the county requirement for a conditional use permit and the township’s ordinances, appellant’s property was subject to Chippewa County regulations as well. Accordingly, we conclude that the operation of appellant’s business in the township’s “Urban Development District” was not lawful, and thus cannot lawfully continue under the preexisting nonconforming use exception.^{FN1}

^{FN1}. In contrast to our holding, the district court declined to apply the nonconforming use exception because it concluded that the “nonconforming use exception does not apply to this ordinance because it is a regulatory ordinance and not a zoning ordinance.” The district court relied primarily on *State v. Schuler*, No. C9-96-1047 (Minn.App. Feb.25, 1997), *review denied* (Minn. May 20, 1997), for its ruling, but “[u]npublished opinions of the [c]ourt of [a]ppeals are not precedential.” Minn.Stat. § 480A.08, subd. 3 (2004). Because we hold that appellant’s dog-breeding business was not a lawful use of her property before enactment of the dog ordinance, we decline to address the issue of whether the ordinance was properly classified as a zoning or regulatory ordinance. Even if we were to conclude that the dog ordinance was a zoning, not a mere regulatory, ordinance, our ruling would be the same because the nonconforming use exception for

appellant’s property is not applicable here. See Katz v. Katz, 408 N.W.2d 835, 839 (Minn.1987) (stating that appellate courts will not reverse decisions below simply because they are based on incorrect reasoning).

DECISION

Because appellant’s dog-breeding business, which is located in a high density population area, was not in lawful use at the time of the enactment of the ordinance limiting the number of dogs per residential premises, we conclude that the exception for preexisting nonconforming uses does not permit appellant’s continued violation of the ordinance. We affirm both the ordinance’s constitutionality and appellant’s conviction under the ordinance.

Affirmed.

Minn.App.,2005.
State v. Reinke
702 N.W.2d 308

END OF DOCUMENT

City of Coon Rapids
Board of Adjustment and Appeals

In re
Appeal of Scott Nellis
10320 Grouse Street N.W.
Coon Rapids, MN

File Numbers:
45839-20632
45839-20633

Notice of Filing of Additional Documents and Changes to Proposed Findings of
Fact

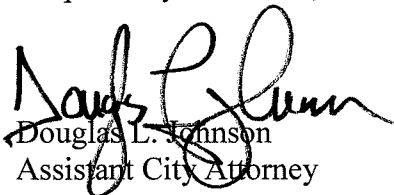
To: Mr. Scott Nellis; Board of Adjustment and Appeals:

Enclosed please find Respondent's Notice of Witness Qualifications and Respondent's Exhibits. Exhibits are marked in the lower right-hand corner of the page with a designation "R_____" and the page number. The number or numbers following the R correspond to the numbers of the Proposed Findings of Fact. Because some findings do not have exhibits with them, the numbers are not sequential.

In producing the exhibits, I noticed a few variations from the Notes/Exhibit area of the Proposed Findings of Fact, which I will describe during my opening statement at the hearing, but which I will also describe in the table below.

Element Number	Changes
3	Includes the Anoka County Property Account Summary for the property.
8	Added Exhibit 8 (Report of Keith Streff)
14	Removed Exhibit 14; no photo available
15	Should be: Exhibit 15 (West and East Bedrooms)
24-26	Added Fire Department Storage Guidelines
29	Added Submission from Mr. Nellis following 4-3-12 Open Mike
35-36	Should be Exhibit 35-37
37	Add: Exhibit 35-37 to include October 5, 2012 letter of appeal

Respectfully submitted,


Douglas L. Johnson
Assistant City Attorney

November 28, 2012

City of Coon Rapids
Board of Adjustment and Appeals

In re

Appeal of Scott Nellis
10320 Grouse Street N.W.
Coon Rapids, MN

File Numbers:
45839-20632
45839-20633

Respondent's Notice of Witness Qualifications

Marc Nevinski

Current Position: Community Development Director, City of Coon Rapids
Field: Community Development
Years in Field: 15 years in Community Development
Education/Degrees: BS University of Wisconsin - Madison, 1996; MA Minnesota State University - Mankato 2000
Certifications: Certified Economic Development Finance Professional - National Development Council 1998

David J. Brodie

Current Position: City Attorney-City of Coon Rapids
Field: Municipal/Government Law
Years in Field: 17
Education/Degrees: BA University of Minnesota, 1992, JD William Mitchell College of Law 1995.
License: MN Attorney License 1995
Membership: Minnesota State Bar Association, Anoka County Bar Association, Vice President-Anoka County Prosecutor's Association

Leya Drabczak

Current Position: Housing Inspector
Field Municipal / Reinvestment Division City of Coon Rapids
Years in field 6
Education: BA St Cloud State University
Certified Housing Inspector 2007 American Home Inspection Training Institute

Desiree A. Toninato

Current Position: C.O.P.P.S (Community Orientated Police and Problem Solving Officer, Coon Rapids Police Department, City of Coon Rapids.
Field: Law Enforcement
Years in Field: 20
Education/Degrees: AA Rainy River Community College, 1987, BS Bemidji State University 1989.
Certifications/Licenses: MN Post License, 1992-present, Child Passenger Safety Certificate 2000-present.

Board Member, Coon Rapids Police Association; Board Member, North Suburban Counseling Center; Board Member, Minnesota Law Enforcement Exploring Association.

Shannon L. Moen

Current Position: Fire Inspector/Fire Fighter, City of Coon Rapids

Field: Fire Service/EMS

Years in Field: 16

Education: Graduate of Park Center Senior High 1988

Certifications/Licenses: Minnesota Fire Service Certification Board, ID# 1192, NFPA 1001 Fire Fighter 2, NFPA 1031 Fire Inspector 1, NFPA 1033 Fire Investigator, NFPA 472 Haz-Mat

Technician, Minnesota Board of Firefighter Training and Education, License# 003323,

Department of Homeland Security State of Minnesota Certified Emergency Manager.

Other: Member of North Metro Chemical Assessment Team, 2001-present; Member of Anoka County Fire Investigation Team, 2011-present

Nicholas A. House

Current Position: Firefighter/Inspector/Acting Captain City of Coon Rapids

Field: Firefighting/Inspections

Years in Field: 12

Certifications/Licenses: NFPA 1033 Fire Investigator, National Fire Academy “Fire in the Single Family Residence”, 2012 Annual Conference for Building Officials, Bureau of Criminal Apprehension – Basic Fire/Arson Investigation.

11244396



Welcome to the Web site of

Anoka County
 Minnesota

Property Account Summary

Current General Information

Property ID	22-31-24-41-0111
Situs Address	10320 GROUSE ST NW , COON RAPIDS, MN 55433-0000
Property Description	FOREST PARK ANOKA COUNTY MINNESOTA CITY OF COON RAPIDS LOT 47 BLK E FOREST PARK
Last Sale Price	
Last Sale Date	
Last Sale Document Type	
Linked Property Group Position	1 of 3 Click for Linked Details
Status	Active
Abstract/Torrens	All Torrens

Parties

Role	Name
Owner	NELLIS SCOTT C

Document Recording Process Dates

Abstract Documents Have Been Recorded Through	10/11/2011
Abstract Documents Have Been Mailed Through	10/11/2011
Torrens Documents Have Been Recorded Through	10/12/2011
Torrens Documents Have Been Mailed Through	10/12/2011

Active Certificates Of Title

Type	Certificate Number	Certificate Date
CRTST CERTIFICATE OF TITLE - STANDARD	77365	11/08/1994

Documents Recorded Within 30 Days Of "Recorded Through" Dates Above

Type	Abstract/Torrens	Recorded Number	Recorded Date
No Documents Found			

Property Characteristics

Lot Size	E25*131
Year Built	1976

* Lot Size: Approximate lot size in feet, clockwise beginning with the direction the lot faces

Tax District Information

City Name	COON RAPIDS
School District Number and Name	ANOKA-HENNEPIN SCHOOL DISTRICT #11

Property Classification

Tax Year	Classification
2011	1A-Residential Homestead
2010	1A-Residential Homestead

Property Values

Tax Year	Description	Amount
2012	Est Market Land (MKLND)	15,200
2012	Est Market Improvement (MKIMP)	37,900
2012	Est Market (MKTTL)	53,100
2011	Est Market (MKTTL)	55,200

2011	Taxable Market (TMTV)	55,200
2010	Est Market (MKTTL)	66,900
2010	Taxable Market (TMTV)	66,900

Tax Amounts for M1PR

Tax Year	Description	Amount
2011	Qualifying Tax Amount (Tax Bill Line 1)	521.97
2011	Prior Year Qualifying Tax Amount (Tax Bill Line 2)	613.52
2011	Total Tax Amounts - Before Payments	630.90
2011	Special Assessments (Included in Total)	108.93

Payment History for Past Three Years

Date Paid	Tax Year	Principal	Interests, Penalties and Costs	Amount Paid
10/07/2011	2011	315.45	0.00	315.45
05/11/2011	2011	315.45	0.00	315.45
10/11/2010	2010	361.23	0.00	361.23
05/13/2010	2010	361.22	0.00	361.22
10/06/2009	2009	813.62	0.00	813.62
05/11/2009	2009	813.61	0.00	813.61

No Charges are currently due.

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I am appealing citation #45839-19945 issued under city code 6-500 Non-domestic animals to "remove all snakes that are prohibited by city code section 6-500" on several grounds.....

- 1) I have possessed these and other snakes since at least 1995 and established my hobby /passion as a legitimate business in 2007 long before city code section 6-500 was changed on July 20, 2010. Prior to that change, I was NOT in violation as all non-venomous snakes were considered "domestic animals". I was not aware of the change to city code, nor notified of the change.
- 2) In the more than 15 years that I've been keeping and breeding snakes, I have invested between \$40,000-\$50,000 in animals, caging and related equipment. Having to remove all "prohibited" snakes would be a great emotional and financial burden to me and at this time of year, moving would be detrimental to the snakes health.
- 3) City code 6-502 "Definitions" of non-domestic animals, paragraph (f) states....."any snake, that is a member of the pit viper or *Blodae* family, including but not limited to copperheads, water moccasins, rattlesnakes, fer-de-lances, bushmasters, asps, cobras, mambas, kraits, coral snakes, sea snakes, South American anacondas, Asian reticulated pythons, boa constrictors, tree boas and sand boas"is in error, ambiguous, and was seemingly written without any basis in scientific fact. Were any qualified biologists or herpetologists consulted prior to changing city code 6-502? There is NO such family of snakes as *Blodae*. Sand boas very rarely exceed 3 feet in length and are NO threat to humans. Tree boas rarely exceed 6 feet in length and again, are NO threat to humans. There are 10 sub-species of boa constrictor ranging from the Tarahumara Mountain boa *B.C.Imperator* that rarely exceeds 3 feet up to the Peruvian boa constrictor *B.C.Constrictor*

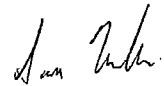
that may reach 11 feet. Only boas exceeding 10 feet MAY POSSIBLY be a threat to humans, but the scientific proof of that is scarce to nil.

- 4) City code 6-502 "Definitions" of non-domestic animals, paragraph (g) states....."any other snake or reptile which by their size, vicious nature, or other characteristic is dangerous to human beings".....Who determines this? Were any qualified herpetologists consulted? Size alone does NOT make an animal dangerous or horses and large dogs would be prohibited. Virtually all of my reptiles have been captive bred and born through many, many generations. The common boa constrictor *B.C.Imperator* and the ball python *Python Regius* have been captive bred and born for well over 40 years. Captive breeding of snakes has been proven to produce offspring that are MUCH more gentle and tractable than their wild counterparts. The ball python is the number one most kept pet snake closely followed by the common boa constrictor. These animals are NOT the wild types you see portrayed on certain TV shows. They are, by and large, gentle and quite tractable posing very little threat, or in case of ball pythons, NO threat to humans.
- 5) The PetCo and PetSmart stores in Coon Rapids are at this moment selling common boa constrictors and ball pythons. I was told by Leya Drabczak, city housing inspector, that this was acceptable because they are commercial entities in a commercial zone. Fine.....what about all the residents that BUY those snakes? They become instant violators of city code 6-502. How many residents of Coon Rapids do you think have bought and currently own these two prohibited species of snakes? City code 6-502 has created a paradoxical problem that never existed with the old code.
- 6) I propose a re-writing of city code section 6-500, specifically section 6-502, paragraphs (f) and (g) pertaining to snakes and other reptiles following a model of legislation in force in Florida state. This model was written by prominent biologists and herpetologists working with the Florida DNR and state legislature. It is a model worked out in a compromise with the state

concerning the keeping of the "Big 5" constrictor snakes. It is workable and is based on sound biological science, not the irrational fear of snakes brought about by hype, misinformation and spreading of half truths by most media outlets. I have several documents supporting my case written by prominent biologists and herpetologists and am willing to help rewrite sections of city code 6-500 to reflect as accurate a depiction of what constitutes a domestic and non-domestic snake. By the way, and with all due respect, some mushrooms are poisonous but there are NO poisonous snakes. Some snakes are venomous though. Just another oversight in city code 6-500 language that needs to be changed.

- 7) At the very least, I believe I should be "grandfathered" in as I have had my collection of reptiles long before the city code was changed. They have hurt NO ONE and are NOT a danger to the public in any way, shape or form. Removing them from my premises will only cause me great financial and emotional suffering.

Scott Nellis



10-31-2011

October 31, 2011

Scott Nellis (homeowner)

10320 Grouse Street NW

Coon Rapids, MN 55433



TO: CITY
MANAGER

A handwritten signature in black ink, appearing to read "Douglas".

Appeal of Notice of Determination of Hearing Examiner following 2-1106(1) Hearing

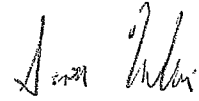
Re: citation # 45839-20633

I'm appealing this citation on several grounds...

- My home occupation is more hobby than business. Virtually ALL my sales take place outside the home at locations outside of Coon Rapids, MN and outside of the state of Minnesota.
- In my opinion, I DO meet the requirements of a home occupation in Coon Rapids. First and foremost, my home IS a residence and home with my hobby occupying one room off the foyer and part of my partially finished basement. It IS therefore "incidental and secondary" to the residence since it also takes up far less than 50% of the space in my house.
- Nothing about my hobby is discernible from the outside, the entry or upstairs for that matter. There is no signage anywhere, and no alterations were made to the structure of the house.
- NO customers come to my house. I do virtually ALL my sales by traveling to Reptile Expos in other states.
- Removal of "illegal" animals is being covered in an appeal to citation # 45839-20632.
- Reduction of animals at my residence has been ongoing, but is never the less, an issue that should have no bearing in this citation.
- Removal of cages from my property also has no bearing in this citation as it is NOT illegal to own equipment. They also do NOT interfere with normal residential use of my property.
- Any offensive odors have been dealt with and are no longer an issue.
- Waste output is currently being handled by normal and regular residential waste service. There are NO laws stating that I cannot have two waste containers instead of one.

Appeal of Notice of Determination of citation # 45839-20633

Scott Nellis

A handwritten signature in black ink, appearing to read "Scott Nellis", written in a cursive style.

October 5, 2012

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[Terms of Service](#)

Quality captive bred and born reptiles since 1996

My name is Scott Nellis and I've been raising and breeding snakes and a few lizards since 1996. I got interested in reptiles as a boy in Oklahoma when I would catch "horny toads" and fence lizards walking home from school in the nearby fields. It wasn't until 1994 that I became interested in raising and breeding reptiles in captivity. It started with 2 corn snakes and grew from there. Today, I specialize in California Kingsnakes, Ball Pythons, various boas, and Aussie pythons. Every now and then something new catches my eye and I might try breeding it. That's what happened with a trio of leopard geckos! So SNSnakes isn't all about snakes, but snakes are my main interest.

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Quality captive bred and born reptiles since 1996

March 18, 2011....I've put my Children's pythons together and am seeing some breeding behavior.

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Colubrid Snakes
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Quality captive bred and born reptiles since 1996

All of the reptiles offered for sale by SNSnakes have been captive bred and born at my facility by me, unless otherwise noted.

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Quality captive bred and born reptiles since 1996

Terms of Service...

- 1) All animals offered for sale have been produced by me and are captive bred and born unless otherwise specified.
- 2) All animals offered for sale are guaranteed to be healthy and eating regularly. The health guarantee extends for the first 10 days you take control of the animal. There are NO guarantees after the 10 day period.
- 3) All sales are final! Please be sure that the animal you are purchasing from me is really what you want. There are NO refunds for merely "changing your mind".
- 4) In the rare event that the animal dies within the first 10 days that you own it, or if it arrives D.O.A in the shipping container, I will offer you either a replacement animal of equal value or a full refund, minus the shipping costs...whichever one you prefer.
- 5) I am FedEx certified and can ship using FedEx or UPS. I only ship on Mondays, Tuesdays, or Wednesdays when the outside temperatures are between 32 and 90 degrees. I will not ship if the overnight low on the shipping route is below freezing or the expected daily high is above 90.

(updated 3-20-2011)

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Quality captive bred and born reptiles since 1996

Reptile shows I will be vending at in 2011...

March 20, 2011 - The Minnesota reptile show in Bloomington, MN

April 17, 2011 - Nebraska Herp Society's Spring show in Omaha, NE

October 2, 2011 - Nebraska Herp Society's Fall show in Omaha, NE

October 7, 8, and 9, 2011 - NARBC show in Tinley Park, IL

(updated 3-20-2011)

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Pythons

- Boas

Colubrid Snakes

Lizards

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Quality captive bred and born reptiles since 1996

Pythons for sale...

Ball Pythons

[illegible]

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Quality captive bred and born reptiles since 1996

I can be contacted by E-mail at SNellis@Comcast.Net or by regular mail at SNSnakes, P.O. Box 48961, Coon Rapids, MN, 55448.

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ANIMAL HUMANE SOCIETY
Humane Agent Supplemental Report
Golden Valley Campus

Investigation Incident: **Animal welfare complaint**

Owner / Suspect: **Scott Nellis**

Address: **10320 Grouse St NW Coon Rapids**

Phone #

Investigator: **Keith Streff**

Report Date: **10/29/11**

On October 19, 2011 the Animal Humane Society received a call from Coon Rapids Housing Inspector Leya Drabczak. She stated that the city received a report that numerous exotic animals may be kept at a residential home. Based on preliminary investigation there was reason to believe the property owner is selling reptiles and/or running a retail business out of the residence. Ms. Drabczak requested and agency assist with the execution of a search warrant.

On October 26, 2011 at approximately 1 pm I met with officials from the city of Coon Rapids for a pre-entry briefing. We executed the search warrant at approximately 2:15 pm. We knocked on the front door of the house and were met by a man verbally identified as Scott Nellis. We introduced ourselves and explained the purpose for our visit. Subsequent investigation and inspection determined the following facts and findings: **(See photo file)**

- The house is a single family dwelling with a yard that appeared relative to the neighborhood.
- There was a very distinct odor apparent from the front steps.
- Mr. Nellis promptly answered the front door and appeared to have just gotten out of bed. He was cooperative and relatively calm.
- Mr. Nellis asked for and we provided a written copy of the search warrant.
- Mr. Nellis admitted breeding, raising and selling reptiles.
- Mr. Nellis considers himself a hobby breeder and alleged to own about 100 snakes among other reptiles including rodents as feeder stock.
- Mr. Nellis alleged that all the reptiles are non-venomous and are confined to containers throughout the home. None of the reptiles are loose to the best of his knowledge.
- Nellis alleged to breed a variety of snake species to sell but does not cross breed or have any hybrids.
- Mr. Nellis alleged to have a female roommate but she was not home at the time.
- Mr. Nellis was home alone and does not have any hired help or any other people involved with his reptile business.

- We entered and searched the home without incident. No loose animals were observed.
- The interior of the home was fairly well kept but had a nearly overwhelming odor consistent with a musk common to the rodent and reptile family.
- A search determined approximately 200-300 non venomous snakes including a cat, lizards, skinks, iguana's, hissing cockroaches, rats, mice and various other feed based insects in the maggot, pupae and/or larvae stage.
- The majority of the snakes and rodents are confined to commercial (Neodesha) containers in the lower level of the house.
- A few aquariums and cages were located on the upper level of the home and confined some of the species noted above.
- Mr. Nellis stated that he could and/or would provide a more accurate inventory of the animal population and specie of animal confined.
- The reptile rooms were very (app. 80 degrees) warm and had a nearly overwhelming odor.
- Other rooms including the attached garage are cluttered to near capacity but manageable.
- The sanitary environment is adequate but the sheer numbers and lack of ventilation makes the odor unmanageable.
- Existing ventilation is inadequate and cannot sufficiently accommodate the number of animals currently confined to the residence.
- Lighting throughout the home is adequate.
- A significant amount of bedding, feed and other related supplies is stored and available in the basement and attached garage.
- A Carbon Monoxide tank with a hose attached is present downstairs.
- Mr. Nellis uses CO in a homemade apparatus to euthanize rodents.
- There are a number of refrigerator/freezer combinations in the lower level of the home – some are filled to capacity with dead rodents.
- All the animals appear to be adequately provided for and in acceptable body condition at this time.
- An upper bedroom has dozens of stored handguns and long guns.
- There are 2 piles of soiled bedding (litter) accumulating on a pile in the back yard of the property.

I explained the animal welfare chapter and advised Mr. Nellis of the minimum requirements to keep and maintain animals. I gave him my business card and advised him that I was assisting the city related to issues involving animal welfare. Most of the concerns appear to involve municipal code violations related to possession of non-domesticated animals (reptiles). The current population of animals is currently stable. However, the lack of proper ventilation and over-crowding presents a risk for disease and cross contamination. I recommended Mr. Nellis seek a commercial facility that is appropriately zoned for his animal inventory. Inspector Drabczak issued citations as well as correction orders. The Coon Rapids city housing department will continue to monitor this case to ensure compliance with municipal ordinance.



COPY

November 23, 2011

The Honorable Bethany A. Fountain Lindberg
Anoka County District Court
325 East Main Street
Anoka, MN 55303

**Re: Administrative Search Warrant
10320 Grouse Street, Coon Rapids, Minnesota**

Dear Judge Fountain Lindberg:

Enclosed herewith please find Affidavit of Leya Drabczak with regard to the above administrative search warrant issued October 25, 2010. If you have any questions regarding this matter please contact our office at your earliest convenience.

Thank you for your time and consideration.

Very truly yours

MariBeth L. Parks
Legal Department

bhs

Enclosure

COPY

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

State of Minnesota }
 }
County of Anoka }

AFFIDAVIT OF LEYA DRABCAZAK

Your affiant, Leya Drabczak, being first duly sworn upon oath, deposes and states as follows:

1. That affiant is a housing inspector employed by the City of Coon Rapids, Minnesota.
2. That following citizen complaints of a large pile of wood shavings used as animal bedding being disposed of in the backyard at 10320 Grouse Street in the City of Coon Rapids, with a foul smell emanating from the pile, affiant applied for and was granted an Administrative Search Warrant for the premises at said location for prohibited animals.
3. On October 26, 2011 the Administrative Search Warrant was presented to the owner of the property, Scott Nellis, to inspect the property for prohibited animals under City Code Chapter 6-500. The results of that inspection are contained in the Findings of Fact issued by your affiant on October 26, 2011 and attached hereto as Exhibit A.

FURTHER YOUR AFFIANT SAITH NOT.

Leya Drabczak

Subscribed and sworn to before me
this ____ day of November, 2011.

Notary Public

10320 GROUSE ST NW

FINDINGS OF FACT

10/26/2011

10320 Grouse St NW Coon Rapids, MN PID # 22-31-24-41-0111

Owner: Scott Nellis

Single family split entry home on residential lot

Inspected by: Leya Drabczak Housing Official, Coon Rapids Police Department members Mike Plankers, Brad Johnson, Greg Koss and Desiree Toninato. Coon Rapids Fire Department members Nick House and Shannon Moen. Humane Officer Keith Streff.

It was reported that a large pile of wood shavings used as animal bedding was being disposed of in the back yard and a foul smell was coming from the pile. Leya Drabczak Housing Inspector for the City of Coon Rapids inspected the backyard on 10/19/2011 and found it to be of a concern. A internet search by Leya Drabczak found a website operated by Mr. Nellis listing his snake breeding business. (See attached information.) This lead to a request for and administrative search warrant to inspect the property.

Inspection of property for prohibited animals was conducted on 10/26/2011 at approximately 1:40 p.m. The Administrative Search warrant was present to the owner Mr. Scott Nellis of the property at the front door. Officers Des Toninato, Brad Johnson and Humane Officer Keith Streff were present and the front door. Officer Greg Koss and Mike Plankers assisted and were located at the rear of the dwelling. Mr. Nellis read the warrant and granted entry into the property. Mr. Nellis was cooperative with the search.

Upon entering a very strong smell of ammonia could be detected. Inspectors eyes and throat were burning. Inspectors wore masks for the remainder of the inspection.

Room on the mail level near the front door housed approximately 80 snakes of various sizes and species. Cages had glass fronts with sliding doors and were stacked on top of one another from floor to ceiling. Cages were located around the perimeter of the room and an island of cages from floor to ceiling was made in the center of the room. The walkways between the columns of cages was less than three feet. The animals were very active because they had not been fed recently and would strike at the glass as inspectors walked by. The room was dark and the light and ceiling fan could not be turned on because the cages were touching the fixture. Inspectors needed to use flashlights to see what snakes were in the cages. The animals would strike at the glass when lights were shining in their cages.

The upper level living room housed 3 large aquariums with lizards in them. The smell in the upper level of the dwelling was as strong as in the lower level of the dwelling and main level.

The lower level of the dwelling housed 2 separate areas of snakes and rats. One room had approximately 120 snakes in it of various species and sizes. There was a large window in this room which provided ample light. There were various animals located in this room including hissing cockroaches, meal worms and various lizards. The cages were located around the perimeter of the room from floor to ceiling.

The second room the lower level housed various large snakes and rat and mice cages. The cages were stacked on top of one another from floor to ceiling. The mice and rats were housed on one side of the room and the snakes and reptiles along the other. Inspectors estimate that there were approximately 300 snakes and 300 rats and mice combined in the property.

Approximate number of snakes totals 300 and feeder rats and mice total 400. Photographs were taken on site. Mr. Nellis did not have a current inventory list. He stated that there are too many animals to keep track of because he buys sells and breeds continually. We did not have the resources to catalog each animal on site.

Humane Officer Keith Streff inspected the condition of the dwelling and living conditions and overall health of the animals. He asked to see the veterinarian records for the animals as well as any medications used, and the carbon dioxide used in the euthanizing chamber. Officer Streff did not see any reason to remove any of the animals from the dwelling. Mr. Nellis stated that he did not have any venomous snakes at the property. Officer Streff confirmed this statement.

Staff did not post the dwelling uninhabitable as there are no children or vulnerable adults in the dwelling. Staff concluded it was in the best interest of the animals to have a caretaker on site. Coon Rapids Fire Department will be placing this address on the Anoka County Dispatch list to use special care upon entering this home in the event of a fire or medical emergency.

Mr. Nellis received administrative citation # 45839-19955 for the debris in the backyard including animal feces and bedding. A separate administrative citation # 45839-19945 was issued for the removal of the prohibited snakes. A compliance date of 11/06/2011 was given. An appeal application was included in the information provided to Mr. Nellis as well as a copy of the Administrative Search Warrant and City Code Sections 6-500.

Coon Rapids Fire Department conducted an inspection of the air quality. Coon Rapids fire report # 21625 states the levels of gas in a dwelling. Due to the strong smell of urine and feces a member of the North Metro Chemical Assessment Team was called to bring NH3/Ammonia detectors to the scene. The doors of the dwelling had been left open in order to air out the air in the dwelling. The reported levels of gas due to ammonia were elevated and higher than what is normally found in a habitable space. The reports list a colorless gas with a pungent suffocating odor. Fire Department staff entered the dwelling with ½ face respirators. Prolonged exposure to high levels of ammonia may contribute to health issues of the occupants of 10320 Grouse St NW.

Related Reports

Coon Rapids Police Report # 11244396 dated 10/26/2011

Coon Rapids Fire Department Report # 21625 dated 10/26/2011

10320 GROUSE ST NW

FINDINGS OF FACT

10/26/2011

10320 Grouse St NW Coon Rapids, MN PID # 22-31-24-41-0111

Owner: Scott Nellis

Single family split entry home on residential lot

Inspected by: Leya Drabczak Housing Official, Coon Rapids Police Department members Mike Plankers, Brad Johnson, Greg Koss and Desiree Toninato. Coon Rapids Fire Department members Nick House and Shannon Moen. Humane Officer Keith Streff.

It was reported that a large pile of wood shavings used as animal bedding was being disposed of in the back yard and a foul smell was coming from the pile. Leya Drabczak Housing Inspector for the City of Coon Rapids inspected the backyard on 10/19/2011 and found it to be of a concern. A internet search by Leya Drabczak found a website operated by Mr. Nellis listing his snake breeding business. (See attached information.) This lead to a request for and administrative search warrant to inspect the property.

Inspection of property for prohibited animals was conducted on 10/26/2011 at approximately 1:40 p.m. The Administrative Search warrant was present to the owner Mr. Scott Nellis of the property at the front door. Officers Des Toninato, Brad Johnson and Humane Officer Keith Streff were present and the front door. Officer Greg Koss and Mike Plankers assisted and were located at the rear of the dwelling. Mr. Nellis read the warrant and granted entry into the property. Mr. Nellis was cooperative with the search.

Upon entering a very strong smell of ammonia could be detected. Inspectors eyes and throat were burning. Inspectors wore masks for the remainder of the inspection.

Room on the mail level near the front door housed approximately 80 snakes of various sizes and species. Cages had glass fronts with sliding doors and were stacked on top of one another from floor to ceiling. Cages were located around the perimeter of the room and an island of cages from floor to ceiling was made in the center of the room. The walkways between the columns of cages was less than three feet. The animals were very active because they had not been fed recently and would strike at the glass as inspectors walked by. The room was dark and the light and ceiling fan could not be turned on because the cages were touching the fixture. Inspectors needed to use flashlights to see what snakes were in the cages. The animals would strike at the glass when lights were shining in their cages.

The upper level living room housed 3 large aquariums with lizards in them. The smell in the upper level of the dwelling was as strong as in the lower level of the dwelling and main level.

The lower level of the dwelling housed 2 separate areas of snakes and rats. One room had approximately 120 snakes in it of various species and sizes. There was a large window in this room which provided ample light. There were various animals located in this room including hissing cockroaches, meal worms and various lizards. The cages were located around the perimeter of the room from floor to ceiling.

The second room the lower level housed various large snakes and rat and mice cages. The cages were stacked on top of one another from floor to ceiling. The mice and rats were housed on one side of the room and the snakes and reptiles along the other. Inspectors estimate that there were approximately 300 snakes and 300 rats and mice combined in the property.

Approximate number of snakes totals 300 and feeder rats and mice total 400. Photographs were taken on site. Mr. Nellis did not have a current inventory list. He stated that there are too many animals to keep track of because he buys sells and breeds continually. We did not have the resources to catalog each animal on site.

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Related Reports

Coon Rapids Police Report # 11244396 dated 10/26/2011

Coon Rapids Fire Department Report # 21625 dated 10/26/2011

STATE OF MINNESOTA, COUNTY OF ANOKA

DISTRICT COURT

STATE OF MINNESOTA)
)
 COUNTY OF ANOKA)

ADMINISTRATIVE SEARCH WARRANT

In re application for administrative search warrant for the premises located at 10320 Grouse Street NW, PIN 22-31-24-41-0111, City of Coon Rapids, Minnesota.

The above-referenced matter came before the undersigned in chambers. DAVID BRODIE, appeared on behalf of the City of Coon Rapids. Based on the file, proceedings, and affidavit herein, the court, being duly advised in the premises, makes the following:

ORDER

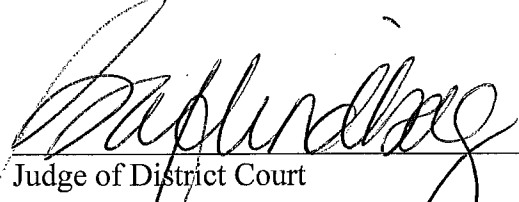
TO: The occupants of the above-described premises:

You are hereby ordered to allow access, by Leya Drabczak, City Housing Inspector, Keith Streff, Animal Humane Society Investigator and Officers and agents under their direction and control, to the above-stated premises on October 26, 2011, between the hours of Noon and 4:30 PM, for the purposes of an inspection to determine violations of the Coon Rapids City Code, Chapter 6-500, Non-Domestic Animals, and Minnesota statutes.

2. If the premises appear vacant, or if entry is denied, you, Leya Drabczak and Keith Streff, and agents under your control, may use reasonable force during the above-stated time period to gain entry to the premises for the above-stated purpose. You shall report back to this Court, within five (5) days of the date of the entry, of your findings, by means of a sworn affidavit.

Dated: OCTOBER 25, 2011

BY THE COURT:


 Judge of District Court

BETHANY A. FOUNTAIN LINDBERG

STATE OF MINNESOTA, COUNTY OF ANOKA

DISTRICT COURT

STATE OF MINNESOTA)
)
 COUNTY OF ANOKA)

**AFFIDAVIT AND APPLICATION IN SUPPORT
 OF ADMINISTRATIVE SEARCH WARRANT**

In re application for administrative search warrant for the premises located at 10320 Grouse Street NW, Coon Rapids, Minnesota, PIN 22-31-24-41-0111.

Leya Drabczak, being first duly sworn upon oath, hereby makes application to this Court for a warrant to inspect the *premises*, heretofore described, for the property and things hereinafter described. Affiant knows the contents of this application and supporting affidavit, and the statements herein are true of Affiant's own knowledge, save as to such as are herein stated on information and belief, and as to those, Affiant believes them to be true.

Affiant has good reason to believe, and does believe, that the following described property and things, to wit:

Non-domestic animals in violation of City Code Chapter 6-500 including snakes that are a member of the pit viper or Blodae family such as Asian reticulated pythons, boa constrictors, tree boas and sand boas, specifically California Kingsnakes, Ball Pythons, boa constrictors, and Aussie pythons.

Any domestic, companion, exotic, agriculture or livestock animal determined to be inadequately sheltered, restrained, fed and/or maintained pursuant to the Minnesota animal welfare laws.

Any domestic, companion, exotic, agriculture or livestock animal reasonably determined to have an infectious disease.

Items of identification to show ownership and occupancy of the premises including but not limited to driver's license, utility bills, bank statements or other documentation proving occupancy and possession of the premises.

Any papers and affects describing ownership, proprietorship or legal custody of said animals.

Records providing history of veterinary treatment, drugs used in said treatment, including available feed or receipts of recent purchases of said provisions.

Any public health hazard directly related to animals and/or proper carcass and waste disposal.

are at the premises, described as:

Lots Forty-six (46), Forty-seven (47), and Forty-eight (48), Block "E", Forest Park, according to the plat thereof on file and of record in the office of the Registrar of Titles of Anoka County, Minnesota.

Residence and detached garage located at 10320 Grouse Street NW, located in the City of Coon Rapids, County of ANOKA, and State of Minnesota, and in support alleges:

1. Affiant is the Housing Inspector employed by the City of Coon Rapids charged with, among other things, the investigation of possible violations of the Coon Rapids City Code.

2. Affiant is informed, through staff and citizen complaints and the internet that the following conditions currently exist on the above-described premises:

On or about October 18, 2011 City Code Enforcement officials received a call from a known confidential reporting party reporting a large pile of shavings from animal cages in the back yard of the above property. The party reported a strong and foul smell coming from the shavings. The reporting party stated that during a conversation with the owner of the property, Scott Nellis, Mr. Nellis stated that he breeds snakes and has approximately one hundred snakes in the residence. Mr. Nellis also told the reporting party that he breeds rats to feed the snakes. The reporting party stated that during a conversation with Mr. Nellis at the front door of the residence the smell of feces from the residence was overwhelming.

According to Anoka County tax records the property has been owned by Scott Nellis since December 1, 1994.

On or about October 19, 2011 your Affiant viewed the backyard at 10320 Grouse Street and observed two mounds of shavings in the backyard. Your affiant took photographs. Your affiant noticed a pungent smell coming from the mounds and the smell could be noticed from the neighboring property.

After observing the backyard at the residence your Affiant searched the internet and found the website snsnares.com that reportedly belongs to Mr. Scott Nellis. The website states that Mr. Nellis has been raising and breeding snakes and lizards since 1996 and provides a Coon Rapids, Minnesota post office box. The website states, "Today I specialize in California Kingsnakes, Ball Pythons, various boas, and Aussie Pythons." The website listed various boas for sale.

Your affiant then contacted Animal Humane Society Investigator Keith Streff for assistance in identifying snakes and determining their welfare. Mr. Streff viewed the website and shared his opinion that due to the detailed shipping information, variety of snakes offered for sale, and a list of shows and events, that Mr. Nellis may have a significant inventory of snakes at the residence.

Your affiant contacted the Coon Rapids Police Department for any information regarding the property and Mr. Nellis. Your affiant did not attempt to contact Mr. Nellis directly because according to the Coon Rapids Police Department Mr. Nellis obtained a permit to purchase a handgun three times in three consecutive years.

3. If found to be true, said conditions would constitute a City Code violation, and are potentially a health hazard and/or unsafe condition for occupants of the premises, in violation of Coon Rapids City Code Chapter 6-500, Non-domestic Animals and possibly other sections of the code and state law.

4. Under Coon Rapids City Code your affiant has authority to make inspections, upon reasonable cause to believe there exists on premises any condition which makes such premises in violation of state law or local ordinance at all reasonable times, and shall recourse to all lawful means to secure said entry if such entry is refused.

5. Affiant believes an order from the Court allowing an inspection at a reasonable time is the only way by which affiant can verify the condition of the premises with respect to the alleged violations. Affiant requests the Court to execute an order authorizing affiant to take the following actions:

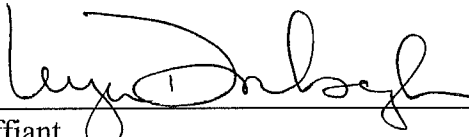
Authority to search, photograph and evaluate by expert opinion said animals present at the residence.

Authority to seize animal carcass remains.

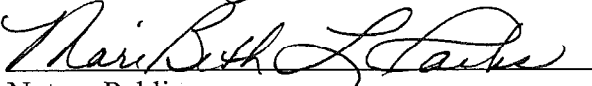
Authority to seize any animals subject to conditions reasonably determined to be in violation of the Minnesota animal welfare laws or in need of veterinary treatment.

Authority to seize any animals on the property without the proper permits and/or license or that are prohibited by state statute and/or local law.

FURTHER YOUR AFFIANT SAITH NOT.


Affiant

Subscribed and sworn to before me
this 25th day of October, 2011.


Notary Public

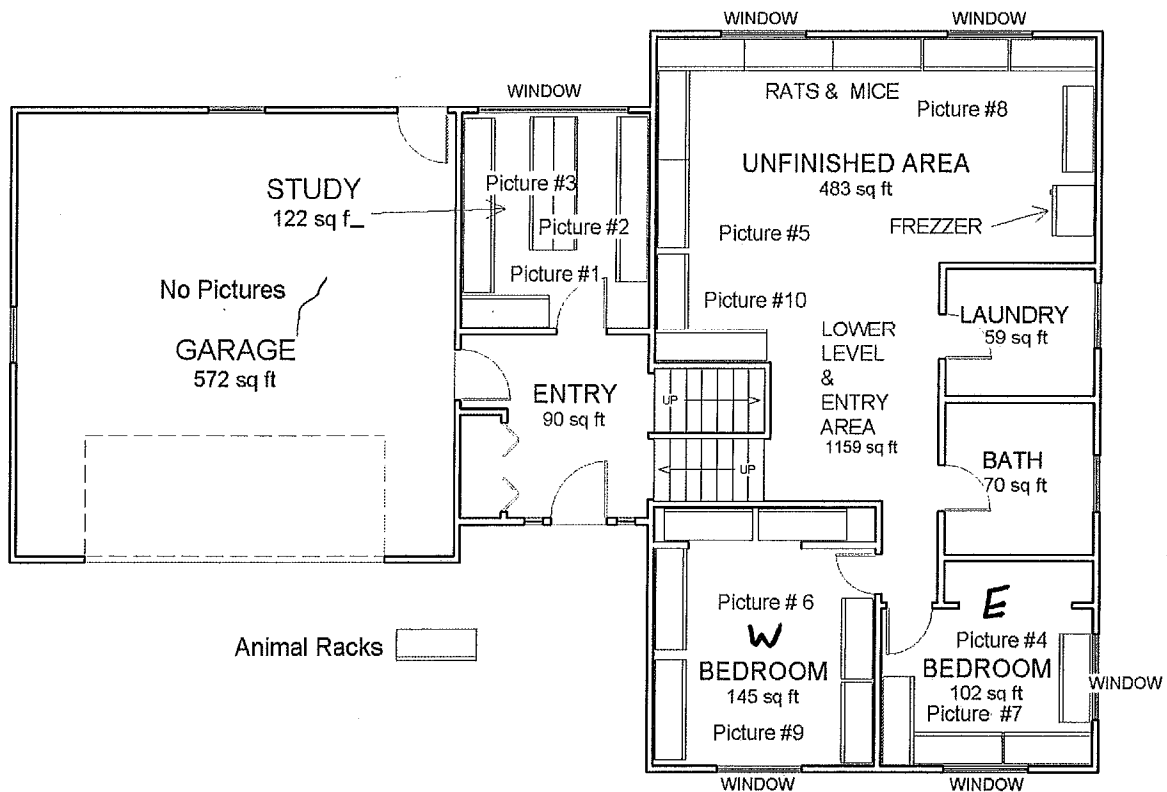


10320 GROUSE ST NW Dwelling Layout with Picture Location

10/26/2011

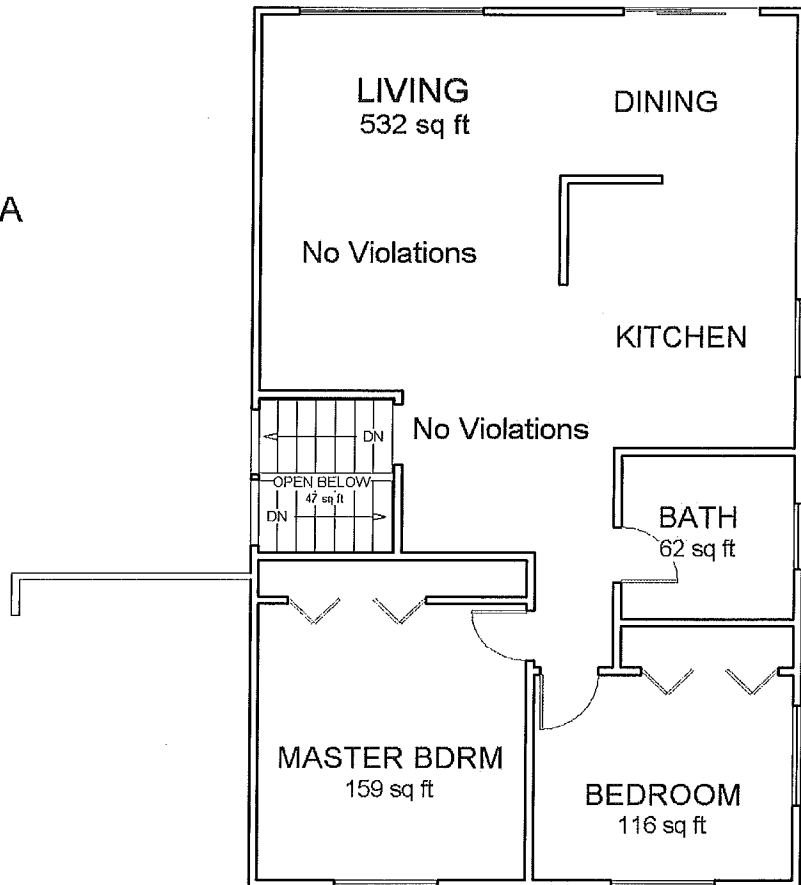
10320 Grouse St NW Coon Rapids, MN PIN # 22-31-24-41-0111

Owner: Scott Nellis



Ground (Entryway) and Lower Levels

MAIN LEVEL LIVING AREA
912 sq ft



Main (Upper) Level

Douglas K. Whitney, P.E.
2012

10320 GROUSE ST NW

Pictures

10/26/2011

10320 Grouse St NW Coon Rapids, MN PID # 22-31-24-41-0111

Owner: Scott Nellis



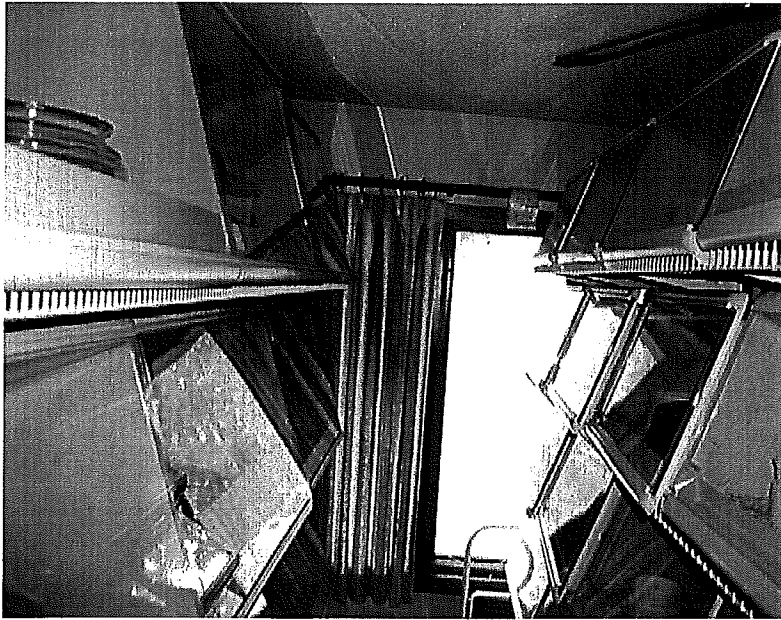
Picture #1 - Room on the ground (entryway) level near the front door.



Picture #2 - Room on the ground (entryway) level near the front door.

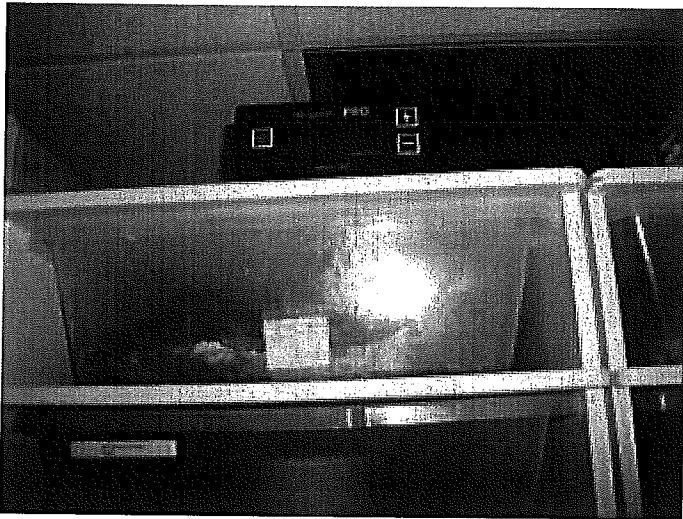
SUBJECT:
DATE: 10/26/2011

10320 Grouse St NW



Picture #3 - Room on the ground (entryway) level near the front door.

Picture #5 - The cages stacked on top of one another from floor to ceiling (lower level).



Picture #6 - Bins stacked to the ceiling with missing tiles (lower level). Note: blocked heat vent & Herpstat Pro environmental control.

5

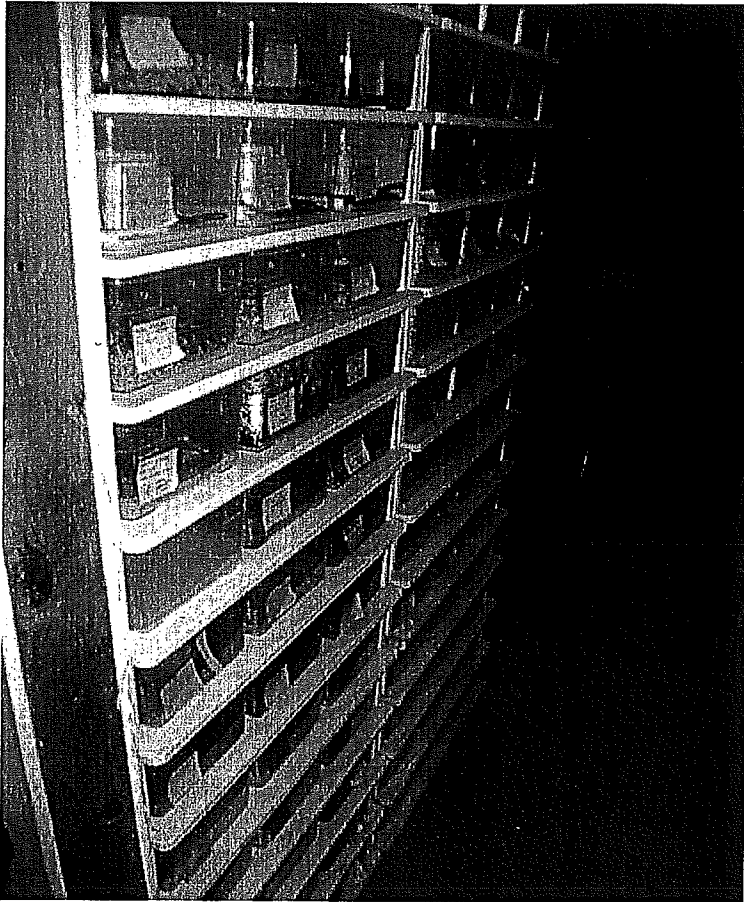


Picture #4 - The lower level of the dwelling with two separate areas of snakes and mice.

4

SUBJECT:
DATE: 10/26/2011

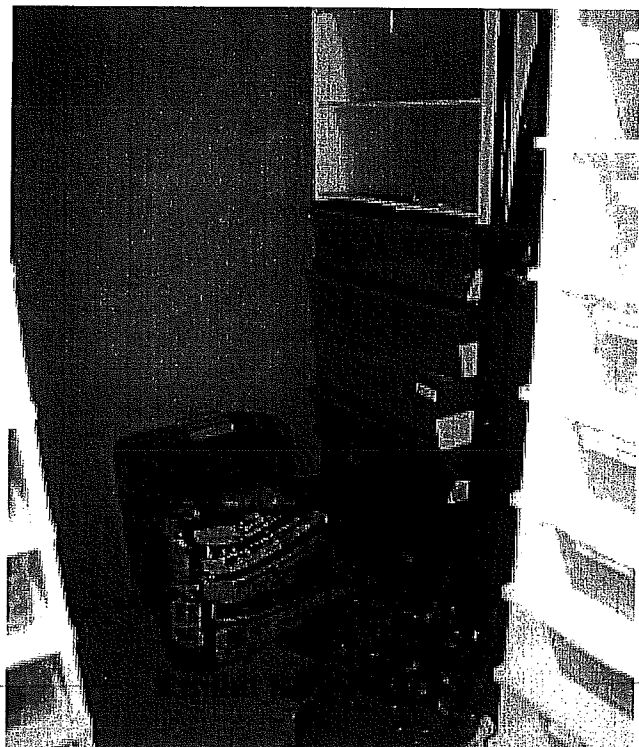
10320 Grouse St NW



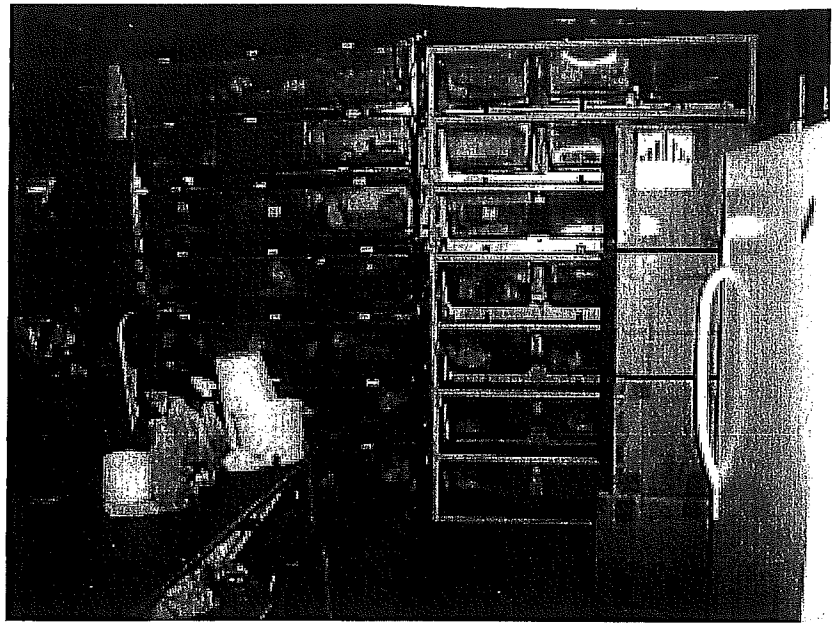
Picture #7 - The cages stacked on top of one another from floor to ceiling (lower level).

SUBJECT:
DATE: 10/26/2011

10320 Grouse St NW

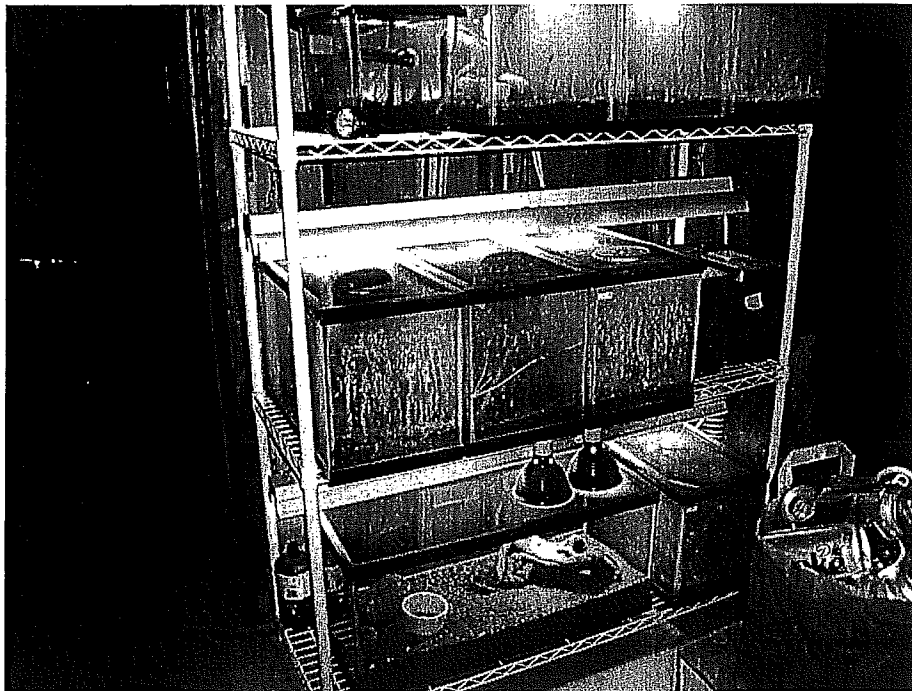


Picture # 9 - Extension cords were used in place of permanent wiring (lower level).



Picture # 8 - The cages stacked on top of one another from floor to ceiling in the work space (lower level).

6



Picture #10 - There were various animals located in this room including hissing cockroaches, meal worms and various lizards (lower level).

7

SUBJECT:
DATE: 10/26/2011

10320 Grouse St NW



Picture #5 - The cages stacked on top of one another from floor to ceiling (lower level).





2/15/2012

Mr. Scott Nellis
10320 Grouse St NW
Coon Rapids, MN 55433

Re: Current Inventory at 10320 Grouse St.

Mr. Nellis,

In the report from Anoka County Humane Officer Keith Streff it was stated that you would be willing to provide the City of Coon Rapids with a list of the current inventory of animals in your dwelling at 10320 Grouse St. NW.

In preparation of your appeal hearing on March 6, 2012 please submit a complete inventory of all snakes, lizards, iguanas, mice and rats. Please include the specie, type (common identifier) age, size and gender of the animals.

We feel finite numbers should be submitted in order to make objective decisions regarding the appeal. Please submit to my attention by March 1st, 2012.

If you have any questions or concerns please contact me I will be happy to assist you.

Sincerely,

Leya Drabczak
Housing Inspector
City of Coon Rapids
763-767-6420
LDrabczak@coonrapidsmn.gov



February 17, 2012

In response to the letter of inquiry from Leya Drabczak, housing inspector for the City of Coon Rapids, regarding my appeal to the city, herein is the current inventory of animals at my house as of Friday, February 17, 2012. I'll be using a generally accepted nomenclature in the industry for counting that separates the sexes of animals as a decimal number. The first number stands for number of males of the species, the second number stands for number of females of the species, and the third number (if included) would stand for the number animals of undetermined sex of the species. As an example, 2.3.8 boas would be 2 male boas, 3 female boas, and 8 boas of undetermined sex.

Snakes.....

Pythons....

Ball pythons (*Python regius*) 18.25 adults and 10.21 juveniles

Spotted pythons (*Antaresia maculosa*) 1.1 juveniles

White lipped pythons (*Liasis albertisi*) 1.1 juveniles

Jungle carpet pythons (*Morelia spilota cheynei*) 1.2 adults and 0.1 juveniles

Coastal carpet pythons (*Morelia spilota mcdowelli*) 2.2 adults and 2.2 juveniles

Savu pythons (*Liasis savuensis*) 2.2 juveniles

Macklot's pythons (*Liasis mackloti*) 0.2 juveniles

Water pythons (*Liasis fuscus*) 1.2 juveniles

Children's pythons (*Antaresia children*) 3.3 adults

Centralian pythons (*Morelia spilota bredli*) 1.1 adults and 2.1 juveniles

Aussie olive pythons (*Liasis olivaceus*) 1.1 adults and 1.1 juveniles

Papuan olive pythons (*Liasis papuanus*) 1.0 juveniles

Woma pythons (*Aspidites ramsayi*) 3.3 adults

Boas....

Argentine boas (*B.c. occidentalis*) 1.2 adults and 3.7 juveniles

Bolivian boas (*B.c. amarali*) 2.1 adults and 0.1 juveniles

Suriname boas (*B.c. constrictor*) 1.1 adults

Columbian boas (*B.c. imperator*) 2.4 adults and 2.1 juveniles
 Pearl island boas (*B.c. sabogae*) 1.1 adults
 Caulker cay boas (*B.c. imperator*) 2.2 adults
 Hog island boas (*B.c. imperator*) 3.3 juveniles
 Sonoran boas (*B.c. imperator*) 1.2 adults
 Columbian rainbow boas (*Epicrates maurus*) 1.1 juveniles
 Brazilian rainbow boas (*Epicrates cenchria cenchria*) 2.0 adults
 Dominican boas (*Epicrates striatus*) 1.1 juveniles
 Dumeril's boas (*Acrantophis dumerili*) 1.2 adults
 Amazon tree boas (*Corallus hortulanus*) 4.4.2 juveniles
 Madagascar tree boas (*Sanzinia madagascariensis*) 2.2 juveniles
 Kenyan sand boas (*Eryx colubrinus loveridgei*) 2.2 adults and 2.2 juveniles
 Rubber boas (*Charina bottae*) 2.2 juveniles
 Rosy boas (*Lichanura trivirgata*) 4.4 adults and 1.4 juveniles

Colubrids.....

California king snakes (*Lampropeltus getula californiae*) 11.12 adults and 8.21 juveniles
 Florida king snakes (*L.g. floridana*) 4.5 adults and 1.1 juveniles
 Blotched king snakes (*L.g. goini*) 1.1 adults
 Speckled king snakes (*L.g. holbrooki*) 1.2 adults
 Desert king snakes (*L.g. splendid*) 2.3 adults and 1.3 juveniles
 Mexican black king snake (*L.g. nigrata*) 1.2 adults and 1.1 juveniles
 Prairie king snakes (*L.c. calligaster*) 0.2 juveniles
 Variable king snakes (*L. mexicana thayeri*) 1.1 adults and 2.2 juveniles
 Honduran milk snakes (*L.triangulum hondurensis*) 2.1 adults and 3.2 juveniles
 Sinaloa milk snakes (*L.t.sinaloae*) 1.1 juveniles
 Chihuahua mountain king snake (*L. pyromelana knoblochi*) 1.1 juveniles
 Texas rat snakes (*Pantherophis obsoleta lindheimeri*) 1.1 juveniles

Corn snakes (*Pantherophis guttata guttata*) 1.0 adults and 3.1 juveniles

Everglades rat snakes (*P. o.rossalleni*) 1.1 juveniles

Baird's rat snakes (*P.bairdi*) 1.1 juveniles

Trans Pecos rat snakes (*Bogertophis subocularis*) 2.3 juveniles

Bull snakes (*Pituophis sayi*) 6.8 adults

Pacific gopher snake (*Pituophis catenifer catenifer*) 1.0 adults

Black pine snakes (*Pituophis melanoleucus lodingi*) 3.0 adults

Southern pine snakes (*P.m. mugitus*) 2.2 adults

Western hognose snakes (*Heterodon nasicus*) 3.2 adults and 3.3 juveniles

Lizards.....

Geckos.....

Madagascar giant day geckos (*Phelsuma madagascariensis grandis*) 4.5 adults

Standing's day gecko (*Phelsuma standing*) 4.0 adults and 0.1 juveniles

Leopard geckos (*Eublepharis macularius*) 16.20 adults

Leachie giant gecko (*Rhacodactylus leachieanus*) 1.1.3 juveniles

Neon gecko (*Lygodactylus williamsi*) 1.0 adult

Dwarf monitors.....

Yellow spiny tailed monitors (*Varanus acanthurus*) 1.3 adults

Skinks.....

Northern blue tongue skink (*Tiliqua scincoides intermedia*) 1.0 adults

Rodents.....

Domestic white and hooded rats (*Rattus norvegicus*) 41.72 adults, 0.0.29 weanlings, and approximately 150 babies. These numbers are HIGHLY VARIABLE as I euthanize and feed off or freeze 50-150 rats of various sizes each week and numerous new litters are always being born. The MAXIMUM number of adult rats cannot exceed 42.84, as that's the maximum number my two rack systems will hold.

Domestic white and fancy mice (*Mus musculus*) 7.10 adults and 0.0.12 juveniles

That's it. Totals are as follows.....

Pythons...121

Boas...91

Colubrids...151

Geckos...56

Dwarf monitors...4

Skinks...1

Rats....approximately 292

Mice...29

That's 363 snakes, 61 lizards, and approximately 321 rodents.

As far as ages and sizes go, I don't know all the ages of every single reptile but they range from 1.5 to 15 years old. Their sizes range from approximately 1 foot to maybe 9 feet in length and from a few ounces to about 28 pounds in weight. The largest snake I have is an adult female Argentine boa at about 8-9 feet in length and 28 pounds. The VAST majority of snakes I have are within the 3-5 foot range and weigh anywhere from a pound to 8 pounds.

Just remember the decimal point in my counts, 41.72 adult rats is NOT four thousand one hundred seventy two! It's 41 males and 72 females. Thank you.

1 1 1

Scott Nellis

- Search
- Form Options
 - Add Exposure
 - Add QA/QI Note
 - Add Addendum
 - Add Attachment
- Reports
 - NFIRS Complete Report
 - NFIRS Standard Report
 - NFIRS Report with Additional Narratives
 - NFIRS Report with Special Study Questions
- History

NFIRS Fire Incident Form

Basic (R)			Apparatus/Personnel (O)		
Validity: 100	FDID: 02306	Incident Date: 10/26/2011	Alarm Date: 10/26/2011 13:33	Incident #: 21625	Entered: 10/26/11 by Nicholas House
Status: Completed	Locked <input checked="" type="checkbox"/>	State: MN	Station: 1	Exposure: 0	Updated: 10/27/11 by Aaron Johnston

NFIRS-1 Basic

A - Incident Information

Incident Date: 10/26/2011	Primary Station: Fire Station #1	Secondary Stations: City Hall (Staff Vehicle) Fire Station #2 Fire Station #3	Incident Number: 21625	NFIRS Number:	Exposure: 000
---------------------------	----------------------------------	-------------------------------------------------------------------------------------	------------------------	---------------	---------------

B - Incident Location

Location Type: Street address	<input type="checkbox"/> Check if it's a Wildland Location.		Census Tract:
10320		Grouse	Street
Street Number	Street Prefix	Street or Highway	Street Type
			Northwest
			Street Suffix
			Apt./Suite/Room
Favorite Location:			
Postal Code: 55433			
City:	County:	State:	

C - Incident Type / D - Aid Given or Received

Incident Type: 551	Assist police or other governmental agency
Aid Given or Received: Mutual aid received (1)	
Aiding Department(s):	ANDOVER, 02114 ANOKA-CHAMPLIN, 02301 BROOKLYN PARK, 27333 SPRING LAKE PARK, 02313
Response Mode to Scene: Non-Emergency (5051001)	

E1 - Dates and Times

	Date	Time (H:mm:ss)
PSAP	10/26/2011	13:33:00
Alarm	10/26/2011	13:33:00
Arrival	10/26/2011	13:39:00
Controlled	10/26/2011	
Last Unit Cleared	10/26/2011	14:44:00
In Service	10/26/2011	14:44:00

F - Actions Taken

Primary Action Taken: 86	Investigate
Secondary Actions Taken:	
Other:	

E2 - Shifts and Alarms

Shifts or Platoon: A	Alarms: 1	District: 1
Alarm Type: Not Paged		
Special Study Questions:		
Who Arrived First:		
DL Number:		

G1 - Resources

<input type="checkbox"/> Check this box if an Apparatus or Personnel Module is used		
Apparatus	Personnel	
Suppression: 0	0	
EMS: 0	0	
Other: 2	2	
<input type="checkbox"/> Check this box if resource counts include aid received resources		

G2 - Estimated Dollar Losses and Values

LOSSES: Required for all fires if known Optional for non-fires	
Property \$:	<input type="checkbox"/> None
Contents \$:	<input type="checkbox"/> None
PRE-INCIDENT VALUE: Optional	
Property \$:	<input type="checkbox"/> None
Contents \$:	<input type="checkbox"/> None

H1 - Casualties (Fire Only)

	Deaths	Injuries
Fire Service	0	0
Civilian	0	0

H2 - Detector / H3 - Hazardous Materials Release / I - Mixed Use Property / J - Property Use

Detector:	
Hazardous Materials Release:	
Mixed Use Property:	Not mixed use (NN)
Property Use:	419 1 or 2 family dwelling

L - Narrative

R24-26

Incident Narrative

Inspectors 1, 11 went out with Leya from housing along with CRPD Officers on a warrant to check a home that had multiple snakes inside. Allina was requested to stand by at the scene until we cleared.

CRPD initiated the search warrant and made contact with the homeowner. Due to the strong smell of ammonia we had to enter the home with 1/2 face respirators on. SBM Fire was contacted via phone and responded with a NMCAT Ammonia sensor (see supplement from Insp. Moen). Units made entry into the house and

Additional Narratives

User Entered
Shannon Moen

Date Entered
10/26/2011

Additional Narrative

I1, I11 along with Housing Dept., CRPD, Humane Society inspected a home that had approximately 300 snakes and numerous rats, mice and insects for feeding. The home smelled of feces and urine. I1 called a member of the North Metro Chemical Assessment Team to bring NH3/Ammonia detectors to the scene. Before monitors entered into the home we performed a bump test with the calibration gas on both monitors. Both monitors passed the bump test. Monitors were also calibrated earlier in the day. Readings were taken on all levels of the home. In the entryway readings were monitored at 7ppm of Ammonia however the door had been open the entire time we were there. Upstairs the readings were 10ppm of Ammonia. In the lower level the readings were 20ppm of Ammonia.

Monitors serial # 030-905816 & 030-905818
Cal gas is Ammonia 10ppm and Nitrogen balance.
Part# X02 N99CP58VOG8 Mig. Nov.2010 LOT# LAK-13-10-1

Ammonia
CAS number: 7664-41-7

NIOSH REL: 25 ppm (18 mg/m3) TWA, 35 ppm (27 mg/m3) STEL

Current OSHA PEL: 60 ppm (35 mg/m3) TWA

1989 OSHA PEL: 35 ppm (27 mg/m3) STEL

1993-1994 ACGIH TLV: 25 ppm (17 mg/m3) TWA, 35 ppm (24 mg/m3) STEL

Description of substance: Colorless gas with a pungent, suffocating odor.

LEL: 15% (10% LEL, 15,000 ppm)

Original (SCP) IDLH: 500 ppm

K1 - Person/Entity Involved / K2 - Owner

Name	Type	Business	City	County	State
Scott C. Nellis	Owner and Occupant		Coon Rapids	Anoka	MN

Business Name (if applicable) _____ Phone Number _____ Person/Entity Type _____

Title _____ First Name _____ MI _____ Last Name _____ Suffix _____

Street Number _____ Street Prefix _____ Street or Highway _____ Street Type _____ Street Suffix _____

Post Office Box Apt./Suite/Room _____

Favorite Location _____

Postal Code _____ City _____ County _____ State _____

M - Authorization

50 Officer In Charge	Johnston, Aaron (50) Signature	Captain Position or Rank	Assignment	10/26/11 Date
<input type="checkbox"/> Check to populate Member Making Report.				
50 Member Making Report	Houss, Nicholas (50) Signature	FF Position or Rank	Fire Stati Assignment	10/26/2011 Date
<input type="checkbox"/> Check to populate Officer in Charge.				

ImageTrend Service Bridge v5.0

R24-26

Exhibit R24- Page 2

Ammonia

What is ammonia?

Ammonia is a corrosive, colorless gas with a sharp odor. Some liquids release ammonia gas. Ammonia is used to make household cleaners, refrigeration units, fertilizers, explosives, fuels and other chemicals. Humans and animals release ammonia in urine.

How can I be exposed to ammonia?

People are usually exposed to ammonia by breathing air that contains the gas. Liquids that contain ammonia can cause exposure by direct contact with the liquid or by breathing ammonia gas released from the liquid. Animal waste, fertilizers, and household cleaners are the most common sources of ammonia. Decaying plants or animals, coal or wood fires, and marshes all release small amounts of ammonia into the air.

Larger amounts of ammonia can be released in the air near farms and industries. Farms have high levels of ammonia due to animal waste storage and the use of liquid ammonia as fertilizer. People who live downwind of large cow, hog, or chicken farms may be exposed to ammonia.

Sewage treatment plants may release high ammonia levels. Industrial sites that store ammonia or use it as a refrigerant can release high levels if the chemical leaks or is spilled. Transportation accidents may also release dangerously high amounts of ammonia.

People who keep a lot of pets indoors and who do not clean up the animal waste may have high levels of ammonia.



What are the effects of exposure to ammonia?

Ammonia levels below 1 part per million (ppm) are not expected to cause health problems. Exposure to household ammonia gas above 1 ppm can cause irritation of the eyes, nose, and throat of some people. Most people can begin to detect ammonia odors when it is at least 1 ppm. Exposure to more concentrated levels (above 25 ppm) can cause headaches, nausea, and intense burning of the eyes, nose, throat, and skin.

Exposure to very high levels of ammonia gas can cause serious burns and permanent damage to the eyes and lungs. Individuals with asthma and emphysema may be particularly sensitive to ammonia. When liquids that contain ammonia are swallowed, severe burns of the mouth, throat, and stomach can occur.

How can I avoid being exposed to ammonia?

- Store household cleaners out of sight and reach of young children.
- Follow the manufacturer's instructions when using strong household cleaners (increased ventilation may be required).
- Never enter agricultural or industrial areas that might contain high levels of ammonia without appropriate training and protection.
- If there is a large ammonia spill, evacuate the area and call the fire department.
- Liquid ammonia fertilizer is hazardous and must be handled with caution.
- **Never mix ammonia-containing solutions with household bleach.** Highly toxic gases are released.

What should I do if I suspect a problem?

Ammonia has a very strong odor. If ammonia cannot be smelled, it is probably not concentrated enough to be harmful. If you can smell ammonia, health effects are possible. If strong ammonia odors are present in your home or environment, and if eye, nose, or throat irritation is occurring you should leave the area and call the fire department. If someone has swallowed ammonia, call 911.

Elderly people, children, and people with lung diseases, such as asthma or emphysema, may be especially sensitive ammonia. Avoid continued ammonia exposure with this population.

For more information

- Contact the Wisconsin Division of Public Health, Bureau of Environmental Health, PO Box 2659, Madison, WI 53701-2659, (608) 266-1120; or
- Visit the department's website, www.dhfs.state.wi.us/eh



Developed by the Wisconsin Division of Public Health,
Bureau of Environmental Health
1 West Wilson, Madison WI 53701
PPH 7150 (revised 11/00)

EXCESSIVE STORAGE GUIDELINES

The Coon Rapids Fire Department has provided the following guidelines to ensure safe storage levels. General Criteria as defined for all single family dwellings, townhomes or apartments. Excessive storage contributes to smoke and serves as a fuel in the event of a fire. The fire will burn longer and at a higher temperature making efforts by rescue personnel more dangerous and difficult.

Interior storage must meet the following criteria:

1. Two feet of cleared space must be maintained between the ceiling and storage.
2. Three feet of cleared space must be maintained in front of every egress and exit. (i.e. all doors and windows.) Doors must open freely and completely.
3. Three feet of cleared space must be maintained around the furnace and water heater.
4. Electric baseboard heat units must have adequate air flow to function properly. A three foot clearance in front of these units is optimum.
5. All hallways, stairways and landings must be free of storage.
6. A garage must have space for at least one vehicle at all times. (City Code Section 11-705). Additionally, the above storage criteria must be maintained.

Single Family

Livable area* storage = 20% of total space.

Storage rooms** storage = 50% of total space.

Attached Multi-family

Livable area* storage = 20% of total space.

Storage rooms** storage = 30% of total space.

* Livable areas is defined as: bedrooms used for sleeping, living rooms, family rooms, kitchens and bathrooms.

** Storage rooms are defined as: bedrooms that are not used for sleeping, basements, storage rooms and garages.

CONSENT AGENDA/INFORMATIONAL BUSINESS

1. APPROVE AGREEMENT WITH PROPERTY OWNER AT 3044-109TH LANE, REGARDING SEWER SERVICE REPAIR
2. 2011-2012 INSURANCE RENEWALS

With regard to Item 1, Councilmember Koch clarified that the City is responsible for the main line while the home owner is responsible for everything up to the main line.

MOTION BY COUNCILMEMBER SCHULTE, SECONDED BY COUNCILMEMBER SANDERS, FOR APPROVAL OF THE CONSENT AGENDA AS PRESENTED. THE MOTION PASSED UNANIMOUSLY.

REPORTS ON PREVIOUS OPEN MIC

3. OPEN MIC REPORT – JERRY PIERCE, 12236 PARTRIDGE STREET NW

Mayor Howe presented a memorandum stating Jerry Pierce, 12236 Partridge Street, had appeared at Open Mic on February 21 with continuing concerns about the Mayor and City Manager and staff's interpretation of whether automatic doors were required at Bunker Hills Clubhouse.

This topic was brought up by Mr. Lewis Peterson at the October 18, 2011, Council meeting. Staff's response to Mr. Peterson's concerns was shared during the November 1 Council meeting. Mr. Pierce was present when the report was shared and staff had provided a copy of the report to Mr. Pierce as well. The Mayor clarified that the 2007 Minnesota State Building Code did not require ADA power operators to be installed on any of the doors at the Clubhouse but that the City chose to have them retrofitted when Mr. Peterson shared his concerns.

OLD BUSINESS

None.

NEW BUSINESS

4. CONSIDER APPEAL DECISION OF BOARD OF ADJUSTMENT AND APPEALS, SCOTT NELLIS, 10320 GROUSE STREET, CASE 12-01V

Assistant City Attorney Brodie presented a memorandum to Council stating property owner, Scott Nellis, is appealing a decision of the Board of Adjustment and Appeals upholding a Compliance Order of the Chief Building Official that directed the residential structure at 10320 Grouse Street be

posted Unfit for Human Habitation on January 17, 2012, unless certain corrective actions were taken. Mr. Nellis appealed the Compliance Order to the Board of Adjustment and Appeals, which upheld the Compliance Order of the Chief Building Official on February 2, 2012. Mr. Nellis is appealing the Board's decision. A copy of the property owner's appeal was shared.

The subject property is a split entry house with a two-car attached garage located in an area zoned Low Density Residential LDR-2. The structure, built in 1976, contains approximately 2,100 square feet of floor area (including unfinished lower level area) and an attached garage of 572 square feet.

On October 19, 2011, Leya Drabczak, Coon Rapids Housing Inspector, inspected the backyard of the subject property in response to a report that a large pile of wood shavings used for animal bedding was being disposed of in the back yard and that a foul smell was coming from the pile. During the inspection, Ms. Drabczak observed this condition in the back yard of the subject property. An internet search by Ms. Drabczak found a website operated by Mr. Nellis listing his snake breeding business. This complaint and inspection led to a request for an administrative search warrant to inspect the interior of the subject property.

On October 26, 2011, pursuant to the administrative search warrant, the subject property was inspected by: Leya Drabczak, Housing Inspector; Coon Rapids Police Department members Mike Plankers; Brad Johnson, Greg Koss and Desiree Toninato; Coon Rapids Fire Department members Nick House and Shannon Moen; and State Humane Society Officer Keith Streff.

Upon approaching and entering the dwelling, and throughout the search, inspectors detected a very strong smell of ammonia. Inspectors experienced burning of their eyes and throats due to the high level of ammonia and it became necessary for inspectors to wear masks for the remainder of the inspection.

Inspectors located a room on the ground (entryway) main level near the front door that housed approximately 80 snakes of various sizes and species. Cages had glass fronts with sliding doors and were stacked on top of one another from floor to ceiling. Cages were located around the perimeter of the room and an island of cages stacked from floor to ceiling was made in the center of the room. The walkways between the columns of cages were less than three feet in width. This arrangement of cages blocked full access to the window in this room therefore obstructing egress. The animals were very active and would strike at the glass as inspectors walked by. The room was dark and the light and ceiling fan could not be turned on because the cages were touching the fixture. Inspectors needed to use flashlights to see what snakes were in the cages. The animals would strike at the glass when lights were shined into their cages. The floor in this room and most floors throughout the dwelling were carpeted.

The lower level of the dwelling housed three separate areas of snakes and rats. One room, a bedroom of approximately 145 square feet, contained approximately 120 snakes in it of various species and sizes. There were various animals located in this room including hissing cockroaches, meal worms and various lizards. The cages were located around the perimeter of the room and stacked vertically from floor to ceiling. The second bedroom on the lower level, containing approximately 102 square

feet, housed snakes in cages stacked from floor to ceiling along all perimeter wall space.

The larger, unfinished area of the lower level, containing approximately 483 square feet, housed various large snakes and mice and rats in cages. The cages were stacked on top of one another from floor to ceiling. The mice and rats were housed on one side of the room and the snakes and reptiles along the other.

In the upper level living room, inspectors found three large aquariums containing lizards. The urine/feces smell in the upper level of the dwelling was as strong as in the lower and ground levels of the dwelling. Humane Society Officer Streff's report includes the following statement, "The interior of the home was fairly well kept but had a nearly overwhelming odor consistent with a musk common to the rodent and reptile family."

Inspectors estimated that there were approximately 300 snakes and 400 feeder rats and mice combined in the property. Photographs were taken on site, some of which are included in this report. The property owner did not have a current inventory list. He stated that there are too many animals to keep track of because he buys, sells, and breeds continually. The City does not have the resources necessary to catalog each animal found on site. In the photographs, each of the plastic bins stacked on top of one another houses snakes. Not all of the snakes are visible in the plastic containers in the photographs.

On February 15, 2012, Housing Inspector Leya Drabczak requested Mr. Nellis provide an inventory of the animals maintained in the dwelling to assist in this appeal. On February 22, 2012, Mr. Nellis provided an inventory listing 363 snakes, 61 lizards and approximately 321 rodents.

Coon Rapids Fire Department personnel conducted an inspection of the air quality in the subject dwelling. The dwelling contained a strong smell of urine and feces and a member of the North Metro Chemical Assessment Team was called to bring NH₃/Ammonia detectors to the scene. The doors of the dwelling had been left open in order to air out the air in the dwelling. Fire Department staff entered the dwelling with half face respirators. The North Metro Chemical Assessment Team found the level of NH₃/Ammonia to be 10 parts per million (ppm) on the upper level and 20 ppm in the lower level of the home. These reported levels of ammonia gas were elevated and higher than what is normally found in the habitable space of a typical dwelling. Prolonged exposure to high levels of ammonia may contribute to health issues of the occupants of the subject premises. According to Coon Rapids Fire Captain Tim Gilsrud, a typical residential dwelling, when tested for ammonia levels, registers a reading of zero or less than one ppm.

Also, on February 7, 2012, I accompanied Housing Inspector Leya Drabczak on a site visit of the subject property; we found squirrels leaving the attic space through a large hole in fascia. Although we were standing upwind from the structure, we could detect strong odors of ammonia and of the rodents. We also noted four 90-gallon trash containers located in front of the garage door. It is my determination that a residence like the subject dwelling is not designed to be used in the manner the property owner is currently using it as none of the rooms that housed the snakes and other animals had either adequate sanitation or ventilation. For example, the floors were not made of

a smooth, hard, nonabsorbent surface that extends upward onto the walls at least six inches. The walls adjacent to the cages also did not consist of a smooth, hard, nonabsorbent surface to the top of the cages.

It is also my determination that the mechanical (ventilation, furnace and air conditioning) systems in a typical residential dwelling are not designed to support the many rows of cages of animals that the subject dwelling contains. Houses in general are designed as a place where one lives - a residence. A dwelling is defined by the International Building Code as a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. A single-family dwelling is not designed with heating and ventilation systems meeting the needs associated with the keeping of snakes or the other animals as found in the subject dwelling. Windows may be used in houses to provide ventilation and houses use recirculation of air to conserve energy. Facilities designed for the keeping of animals are provided with 100 percent supply and exhaust in the ventilation systems with no recirculation of air to control the spread of disease. In this dwelling, inspectors noted the heating system had been modified by blocking system registers with rags in the ductwork. Officer Streff's report states that the "existing ventilation is inadequate and cannot sufficiently accommodate the number of animals currently confined to the residence."

Additionally, I find that there were an insufficient number of electrical receptacles (outlets) to serve the dwelling as evidenced by the extensive use of extension cords found in the dwelling. Extension cords shall not be used as a substitute for permanent wiring; extension cords and flexible cords shall not be affixed to structures; extended through walls, ceilings, floors; extended under doors or floor coverings; nor be subject to environmental damage or physical impact. A significant amount of receptacles are necessary to accommodate the heating elements in each cage. During the inspection of the dwelling, Mr. Nellis stated to Ms. Drabczak that "snakes, lizards and insects do not fare well in overly ventilated, drafty areas."

Under separate action, the property owner received Administrative Citation # 45839-19955 for the debris in the back yard, including animal feces and bedding. The property owner complied. Also under separate action, Administrative Citation # 45839-19945 has been issued for the removal of all snakes prohibited by City Code Chapter 6-500, Non-domestic Animals. Mr. Nellis has filed an appeal in that matter and it is being considered under a separate, administrative appeal action.

The conditions of the subject structure that led to the determination of the building being classified as Unfit for Human Habitation (City Code Section 12-313), and an Unsafe Building or Structure (Part 1300.0180 of the Minnesota State Building Code) and the issuance of the Compliance Order (City Code Section 12-315) include:

- Dwelling is not provided with the mechanical and ventilation systems needed to keep and care for the numerous snakes, lizards, rodents and insects present in the structure.
- The air contaminants are well above any acceptable limits.
- The wall and floors are not of smooth, hard, nonabsorbent surfaces needed to provide sanitary conditions.

- The overall excessive storage present in the structure creates a hazard for fire fighters and emergency responders during emergency operations.
- The windows that the fire department would use during emergency operations are blocked, limiting access into the dwelling.
- The use of extension cords is a noncompliant condition and whether energized or not, creates dangerous condition to human life and property. As used they pose both a shock and fire hazard when used as a substitute for the fixed wiring of a structure.
- Section 301.14 of the 2006 International Fuel Gas Code requires all buildings or structures and the walls enclosing habitable or occupiable rooms and spaces in which persons live, sleep or work, or in which feed, food or foodstuffs are stored, prepared, processed, served or sold, shall be constructed to protect against rodents in accordance with the Building Code.

Based on these conditions, staff issued a Compliance Order, dated November 30, 2011, ordering Mr. Nellis to correct certain conditions within 45 days. Failure to make the corrections would result in the posting of the structure as unfit for human habitation on January 17, 2012. The property owner was required to make the following corrections:

- Completely remove all the snakes, lizards, rodents and insects from the property.
- Remove all items related to the keeping of the snakes, lizards, rodents and insects, and waste and debris.
- Provide a satisfactory air quality report.

On December 5, 2011, Mr. Nellis appealed the Compliance Order. As a result, and because children or vulnerable adults reside in the dwelling, staff did not post the dwelling as uninhabitable. Additionally, staff concluded it was in the best interest of the animals to have a caretaker on site. Coon Rapids Fire Department placed this address on the Anoka County Dispatch list to use special care upon entering this home in the event of a fire or medical emergency.

The Board of Adjustment and Appeals considered Mr. Nellis' appeal on February 2, 2012. The Board upheld staff's decision. Copies of the staff report to the Board and the Board meeting minutes were shared. The staff report contains Mr. Nellis' original appeal of the Compliance Order. The minutes include written remarks Mr. Nellis presented to the Board.

Mr. Nellis appealed the decision of the Board of Adjustment and Appeals in this matter on February 6, 2012. An amendment or rejection of the Board's decision requires an affirmative vote of at least five members of the City Council.

Mayor Howe questioned how ammonia was being created within the home. Assistant City Attorney Brodie indicated ammonia was a by-product of the waste being generated by the snakes.

Councilmember Koch asked how the site could be brought into compliance. He said he could not find within the City Code a limit of snakes and rats within a residential home. Assistant City Attorney Brodie indicated the air quality and fire issues would have to be addressed. Staff believed the non-domestic pet ordinance would eliminate the boa constrictors and larger snakes within the home.

Mayor Howe inquired why such a large number of snakes and rats were located within the premises. Assistant City Attorney Brodie indicated he believed the homeowner enjoyed the snakes but also had business running out of his home, adding the rats were used to feed the snakes.

Councilmember Sanders questioned if the decision were to be overturned if the home would be found habitable for children. Assistant City Attorney Brodie stated there were health and safety concerns based on the air quality. He reiterated that the snakes were all caged and did not pose a threat to staff at any time during the inspections of the site.

Councilmember Schulte clarified that five affirmative votes from Council would be needed to overrule the Board of Adjustment and Appeals decision.

Scott Nellis, 10320 Grouse Street, presented the Council with a prepared statement. He noted his home thermostat was set at 70 degrees during the day and 68 degrees at night. He stated the cages in the basement had supplemental heat for the snakes. Mr. Nellis further addressed the heating concerns stating he did not feel his home was a fire risk.

Mr. Nellis discussed the four waste containers in the front of his house. He noted one was used for yard waste, one for recycling and the other two were used for waste. He explained he reviewed City Code prior to starting his business in 2007 and up until July of 2010 the species of snakes were not a concern. Mr. Nellis noted he had a separate appeal in with the City for this issue.

Mr. Nellis indicated he does not have any children living in the home and that he does not have any iguanas. He reported that at this time he was only using two extension cords for additional power. He stated he was doing business from his home and sales took place at reptile expos. However, this was mostly being completed as a hobby.

Mr. Nellis explained his home has been found "not typical". He stated the main level of his home resembled a typical home but the basement was used for his hobby. He reported the ammonia smell found in his home by staff was higher than normally found due to his hectic work schedule. He apologized for letting this go and reported the rat cages were being kept clean.

Mr. Nellis thanked Councilmember Koch for visiting his home last week and for discussing his concerns. An issue raised was the air quality within the home. He stated an air purifier could be purchased for the basement but would cost roughly \$1,300. He did not feel the home's ammonia levels were consistent with the levels reported by staff. He concluded that he has been doing this for the last 15 years and had invested a lot of money in his business and did not want the snakes removed. He indicated his emotional well-being was being hindered due to the issues he was dealing with between himself and the City.

Mayor Howe questioned if any of the snakes were poisonous. Mr. Nellis reported he does not have any venomous snakes on site. He indicated PetCo sold python snakes and this matter should be addressed along with the sale of boa constrictors. He restated he did not house or sell venomous snakes.

Mayor Howe read the findings with regard to this case and asked how the Council would like to proceed.

Councilmember Koch said he understood there were a great number of snakes in this home. After visiting Mr. Nellis' home he found the site to be less offensive than other homes he has been in through his profession as a realtor. Councilmember Koch said he felt that the home was structurally compliant and that he found the snake cages to be well cared for. He felt there were other homes that had strong pet smells. He said he did not know what the right number of snakes should be but said he did not feel it was reasonable to require Mr. Nellis to remove all of the reptiles.

Councilmember Larson agreed with Councilmember Koch. She indicated she has had a pet snake in the past and currently has a pet rat. She recommended Mr. Nellis reduce the number of rats on site as this would reduce the ammonia odor. She stated there was a lot of reptiles in the home and recommended the home occupation issue be resolved.

Councilmember Klint agreed the reptiles were well cared for. However, the Council did not have expertise in this area and was relying on City staff for direction. She expressed concern on the number of animals and types of reptiles being housed within the home. Even if the home were to come into compliance, the homeowner was operating a business out of the home without a license.

Councilmember Koch reviewed the plans from Mr. Nellis and the location of the snakes in the basement. He said he did not object to the placement of the cages and felt there were no structural concerns within the home. He stated he spoke with both neighboring property owners and they do not object to the home business.

Councilmember Larson questioned if the number of rodents on site could be reduced given the number of snakes onsite. Mr. Nellis stated this was a concern. He reported he did have to increase the number of rats last summer and now had slightly more than needed. However, if his snake hatchlings survived, they would require live feed.

Councilmember Koch asked if it was possible for Mr. Nellis to sell down some of his inventory. Mr. Nellis stated he has been trying to accomplish this but that it is a difficult market at this time.

Councilmember Koch questioned if Mr. Nellis would be willing to take a loss on some of the sales in order to maintain his hobby out of his home. Mr. Nellis stated he would be willing to sell off 50-60 juvenile snakes.

Councilmember Sanders questioned if the home occupation violation should be further discussed. Mayor Howe stated the home occupation violation was a separate issue from the findings being considered this evening.

Mayor Howe indicated the overabundance of snakes in this home was his main concern. He read several findings for the record noting rodents were being prepared for food in this home. He understood that pets could be housed in a home within reason. However, the upkeep and feeding of

these reptiles was a concern. He stated he would not be satisfied with the sale of 50-60 snakes. He felt the number should be reduced to 10-12 total.

Councilmember Schulte indicated he had a lot of questions with the business being conducted out of the home and how the neighborhood was being affected by this property. He was pleased that Councilmember Koch visited the site. He indicated the Council was being asked to consider the findings before them this evening. He felt the air quality, fire safety and electrical issues were the main concerns as well as the egress and ingress for the Fire Department. He felt the extension cords could be removed, the air quality could be improved, and the aisle ways could be brought into compliance without shutting down the business entirely.

Assistant City Attorney Brodie stated the order as written requires Mr. Nellis to remove all of the snakes. He said he did not feel that 36 inch aisles alone would bring the site into compliance. He cautioned the Council from proceeding in this manner. He requested the Council uphold the appeal and allow the City to work with Mr. Nellis to bring the home into compliance.

Councilmember Sanders said he was in favor of bringing the site into compliance. He said he did not see enough information to overturn the expert information provided by staff this evening.

MOTION BY COUNCILMEMBER SANDERS, SECONDED BY COUNCILMEMBER KLINT, TO ADOPT THE FINDINGS AND UPHOLD THE BUILDING UNFIT FOR HUMAN HABITATION AND UNSAFE BUILDINGS OR STRUCTURES COMPLIANCE ORDER OF THE CHIEF BUILDING OFFICIAL DATED NOVEMBER 30, 2011.

Councilmember Johnson stated Mr. Nellis was extremely knowledgeable and cooperative. He thanked him for his handout this evening. He agreed the site needed to be brought into compliance and would support the recommendation provided by staff.

Councilmember Koch questioned what motion was being made at this time. He said he did not feel the motion was providing an opportunity for Mr. Nellis to bring the site into compliance without having to remove all of the reptiles.

Councilmember Schulte indicated the criteria from staff addressed the fire aisles, air quality and electrical issues. He stated another appeal will be brought to the City to address the number of snakes allowed within the home, while also having to address the home business.

Councilmember Sanders questioned if there was another way to make the motion without every animal being removed from the home. Assistant City Attorney Brodie indicated the Council could modify the appeal stating the home had to be made habitable, adding another option would be to table the item while directing staff to work further on a resolution with Mr. Nellis.

Mayor Howe inquired about the status of the other appeal items. Assistant City Attorney Brodie stated the other appeals were on hold at this time to allow the Council to consider the first appeal.

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March 6, 2012

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He said after this item had been addressed staff would proceed with the illegal snake issues. He added the home occupation issue has yet to be addressed by staff.

Councilmember Koch stated Mr. Nellis was very knowledgeable and has been extremely cooperative with the City. He felt Mr. Nellis would be reasonable to work with in order to bring the home into compliance.

Councilmember Schulte indicated the current motion was to uphold the findings and would require all of the reptiles to be removed from the home within 45 days. He said he no longer supported the motion.

Councilmember Sanders agreed and requested suggestions from the Council on how to proceed or amend the motion.

Mayor Howe stated the motion could be withdrawn.

Councilmember Klint suggested the motion be reworded to bring the home into compliance in the next 45 days versus removal of all reptiles in the next 45 days.

Councilmember Koch said he was unclear of what "compliance" would be and was in favor of Mr. Nellis being allowed additional time to address the issues with staff.

Mayor Howe read the compliance language provided by staff.

Councilmember Schulte suggested the motion be amended to remove enough snakes, lizards, rodents and insets from the property and related items for the keeping of snakes, lizards and rodents waste and debris from the property to provide a satisfactory air quality report; to provide proper access for the fire department with 36" in all aisle ways; and to eliminate all extension cords used as fixed wiring within 45 days.

Councilmember Sanders said the home has to be in compliance with regard to electrical codes.

Councilmember Larson indicated she would support the amended language.

Councilmember Johnson indicated there were several options at this time, one being to table the item while directing staff to work with Mr. Nellis. He said he felt the Council was becoming too detailed.

MOTION BY COUNCILMEMBER KOCH, SECONDED BY COUNCILMEMBER LARSON, TO TABLE ACTION ON THIS ITEM DIRECTING STAFF TO WORK FURTHER WITH MR. NELLIS.

THE MOTION PASSED 4-3, COUNCILMEMBERS KLINT, SANDERS AND MAYOR HOWE OPPOSED.

Mayor Howe stated that because the item was tabled this would allow staff time to review all of the issues concerning the property. He suggested that staff review the occupancy and non-domestic animal code as well.

Councilmember Sanders felt this was a public safety issue and that a residential home should not be used for this type of activity. He recommended that Council and staff create a workable solution to assure this situation is addressed.

5. **CONSIDER RESOLUTION AUTHORIZING THE BUDGET, APPROVING PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS FOR THE VEHICLE STORAGE BUILDING, PROJECT 11-28**

Public Services Director Gatlin presented a memorandum to Council stating on December 6, 2011, Council approved the preliminary design for the proposed vehicle storage building and authorized the architect to proceed to complete the final design plans and construction specifications for the project. The project architect, Kodet Architects, has completed final plans and specifications for the building project. Consideration for approval of the plans and specifications, budget and authorization to place the advertisement for bids is requested at this time.

On December 6, 2011, Council discussed design alternatives for the new vehicle storage building. At that time, Council elected an alternative for the building design based on required space needs to meet current requirements. This design provides for a building of approximately 20,334 SF and parking for 54 vehicles. In addition, storage space is provided for police and fire needs. A small wash bay and mechanical room with an air compressor was included in the project design.

This vehicle storage facility will provide covered storage for police, fire, engineering, assessing and inspection vehicles currently parked outdoors. The facility will increase operational efficiency and protect the vehicles from the weather. Included for Council review is a proposed site plan showing the building layout, renderings showing the proposed building exterior appearance and an interior floor plan showing the proposed layout. The building is proposed to be located along the existing southeast corner of the current parking lot. One row of parking spaces will be eliminated and the building will be located on this portion of the site as shown.

MOTION BY COUNCILMEMBER JOHNSON, SECONDED BY COUNCILMEMBER SCHULTE, TO ADOPT RESOLUTION NO. 11-28(8) AUTHORIZING THE BUDGET, APPROVING PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS FOR THE VEHICLE STORAGE BUILDING. THE MOTION PASSED UNANIMOUSLY.

6. **CONSIDER RESOLUTION APPROVING PLANS AND ORDER ADVERTISEMENT FOR BIDS, BITUMINOUS STREET PATCHING REPAIRS, PROJECT 12-13**

City Engineer Vierzba presented a memorandum to Council stating each year the City contracts for

11155 Robinson Drive
Coon Rapids MN 55433
Tel 763-755-2880
Fax 763-767-6491
www.coonrapidsmn.gov



March 28, 2012

Scott Nellis
10320 Grouse Street N.W.
Coon Rapids, MN 55433

Dear Mr. Nellis:

Thank you for allowing us to review your residence and sharing your business operations with us. Based on our review of the current conditions at your residence, City staff still finds that your residence is uninhabitable under City Code 12-315, that you still possess snakes that are prohibited under City Code 5-600, and that you are operating an illegal home occupation under City Code 11-604. Rather than pursuing these violations, the City would be willing to enter into an agreement with you that would provide:

1. a mutually agreed upon time for you to relocate/remove all the prohibited snakes from your residence;
2. reduce the overall space in your residence that is devoted to your business;
3. reduce the amount of live rats in the residence; and
4. reduce the level of ammonia/smell to a mutually acceptable level that at minimum is not detectable in the surrounding neighborhood.

With an agreement, you and the City could determine a reasonable amount of time for you to meet these requirements. An agreement would also allow you to keep some of your snakes and most, if not all, of your reptiles.

Please respond in writing as to whether you would be willing or not willing to enter into such an agreement. I would request a response no later than Friday April 6, 2012. If you have any questions or wish to discuss this further, please feel free to contact me. I look forward to your response.

Very truly yours,

David Brodie
Assistant City Attorney

bhs

Mr. Brodie,

April 5, 2012

In response to your letter of March 28, 2012 offering an agreement, I will have to decline based on the very unfavorable terms set forth in said agreement. The main point of disagreement is in line (1)...removing ALL prohibited snakes from my residence. As you know, I'm still appealing that citation as unconstitutional and in violation of ex post facto law. Most of the value in my hobby/business is tied up in harmless boa and python snakes.....approximately \$18,000-\$20,000.

I'm already trying to comply with line (2) of your offer.....to reduce the space in my residence devoted to my reptile hobby business.

Line (3).....I have already reduced the number of live rats in my residence by about one third.

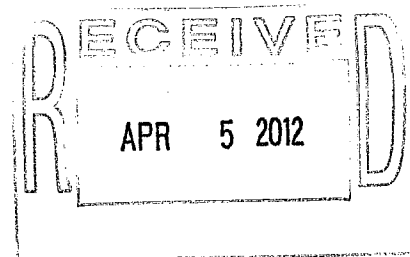
Line (4).....The ammonia smell has already been reduced to a level that is NON DETECTABLE to barely noticeable INSIDE my house. The surrounding neighborhood CANNOT smell ANY odors from my house. The dog park down the block has more objectionable odors emanating from the grounds! This is a NON issue and has already been solved!

So, while I'm already in compliance with line (4), and working on the issues of lines (2) and (3), I'm sorry, but I cannot comply with the demands of line (1).

Thank you,



Scott Nellis



Scott Nellis
4-17-12
Open Mic Statement

This is in response to the open mic session of April 3, 2012. Contrary to what Mr. Marc Nevinski states in the report, only ONE of my questions was partially answered by the three data practice requests that I submitted. The city is refusing to answer any other questions that I submitted at the open mic session of April 3, 2012. Why is this? Please answer the questions. What's the point of having an open mic session for the citizens of Coon Rapids if the staff refuses to answer the questions put forth by the citizens?

Perhaps it's because in the drafting of the amended city code 6-500 at the September 21, 2010 council meeting, an exception was included in 6-501(2) to allow for an existing use to continue after the ordinance takes effect. That's the grandfather clause! But in the final version on section 6-501(2) the language only talks about maintaining cows on plots of 20 acres or more. So how does "allowing for an existing use" get changed to "cows on 20 acres or more"? Please answer that question.

The boa and python snakes that I own were obtained long before September 21, 2010 and would constitute a legitimate "existing use" situation. So how is it that in the previous five months or so of dealing with the city over "illegal" species, the city has NEVER, EVER once offered to grandfather me in under the "existing use" language? This is a direct violation of Constitutional and ex post facto law!

Why is the city pursuing me in direct violation of ex post facto law? Why is the city building inspections department threatening me with building code violations that pertain to commercial or public buildings, NOT private residential buildings? Why was my house raided in October 2011 by no less than 10 people for a violation of soiled rodent litter in the back yard when the use of manure is allowed under city code 8-105 and the snakes I keep are legal under ex post facto law? How many building inspectors does it usually take to inspect code violations...One...Two?

Is city staff that incompetent? I doubt it. But the legal malfeasance and harassment by the city threatening me with code violations that do not apply is

cc: Dave
Marc
Lynn

blatant discrimination. It painfully obvious that the city does not like snakes and their continued pursuit of me in violation of ex post facto law shows it.

The only reason that I'm given by the city for this action is that it doesn't fit in their 2030 Strategic Vision plan. I believe this is the plan that eventually strips away most of the individual freedoms of the citizens in favor of the "public good". Citizens of Coon Rapids take note, you could be next.

Scott Nellis

A handwritten signature in black ink, appearing to read "Scott Nellis", written in a cursive style.

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 11-600

LOW-DENSITY RESIDENTIAL DISTRICT (LDR-1)

11-601 Intent. This district is intended to provide single-family housing while preserving natural features such as topography, water, and large stands of trees.[Revised 9/4/01, Ordinance 1737]

11-602 Permitted Uses.

- (1) One detached single-family dwelling unit per lot.
- (2) Agricultural, except feedlots.
- (3) Public uses or utilities, except major buildings, substations, towers, or high voltage transmission lines.
- (4) State licensed community residential facilities serving six or fewer persons, licensed day care facilities serving 12 or fewer persons or group family day care facilities serving 14 or fewer children.[Revised 9/5/95, Ordinance 1537]

11-603 Accessory Uses.

- (1) Private garage/storage structures.[Revised 2/4/97, Ordinance 1597]
- (2) One outdoor living room.[Revised 2/4/97, Ordinance 1597]
- (3) Other detached accessory structures such as fish houses, gazebos, greenhouses, and playhouses incidental to the dwelling unit.[Revised 2/4/97, Ordinance 1597]
- (4) Multiple pet locations duly licensed under Chapter 6-200.[Revised 7/01/08, Ordinance 1984]
- (5) Home occupations meeting the following criteria:
 - (a) The home occupation is clearly incidental and secondary to the residential use of the property and does not change the character thereof.
 - (b) Nothing is discernable to surrounding properties indicating that a home occupation is being conducted except for a sign as permitted by Chapter 11-2100, a garden, or one motor vehicle (otherwise permitted by 11-1800) whose nature or signage indicates it is used in the business. There is no outdoor storage or display of equipment or materials used in the home occupation.[Revised 2/4/97, Ordinance 1597]
 - (c) No internal or external alterations are made that are not customarily found in dwellings.
 - (d) If the home occupation is carried on in the garage, the minimum amount of required garage space is maintained as garage space.
 - (e) No parking spaces are improved to provide for the home occupation. Any vehicle whose nature or signage indicates it is used in the business is parked in the driveway or garage.
 - (f) No one who does not reside on the premises works on the premises. No one is transported from the premises to a job site who does not reside on the premises.
 - (g) The home occupation is serviced by delivery vehicles no larger than 26,000 pounds gross vehicle weight.[Revised 12/11/90, Ordinance 1361]
 - (h) Permitted home occupations are generally those that do not bring people or customers to the residence and that are not prohibited home occupations. This would include, but not be limited to, the following: a craft business that markets goods at craft

fairs, off-premises shops, parties, etc., so that no customers visit the residence; a typing, accounting, or mailing service where all work is picked up and delivered to the customer; the office for a traveling salesperson or a cleaning service; a retail business where all orders are received by mail or telephone and are delivered to the customers' premises; and a sewing business that does not involve customer visits.[Revised 2/4/97, Ordinance 1597]

- (6) Patios and tennis courts.
- (7) Private stables on a minimum of five acres.
- (8) Private swimming pools as regulated under Chapter 12-500.
- (9) Renting of rooms for not more than two roomers per dwelling unit.
- (10) Signs as regulated under Chapter 11-2100.
- (11) Phone booths, bus shelters, and other such incidental structures.
- (12) State licensed day care facilities serving 13 or more persons when accessory to a hospital, church, private school, or nursing home.[Revised 9/5/95, Ordinance 1537]
- (13) Home Based Retail Sales in conformance with Section 11-1862.[Revised 8/4/98, Ordinance 1640]
- (14) Storage of docks on riparian lots provided the dock is stored within 50 feet of the shoreline and setback at least five feet from any property line. Docks may be stored further than 50 feet from the shore line provided the property owner provides written proof to the Community Development Director that exceptional and unusual circumstances exist, relating to topography or vegetation, that prohibit compliance with the setback requirement. If the Director agrees that exceptional and unusual circumstances exist the Director may approve the dock storage location. [Revised 11/15/11, Ordinance 2080]

11-604 Conditional Uses.

- (1) Cemeteries and their accessory structures.
- (2) Churches, private schools, nursing and boarding care homes, hospitals, sanitariums, rest, and similar institutions.
- (3) State licensed community residential facilities serving seven or more persons or group family day care facilities serving 15 or more children.[Revised 9/5/95, Ordinance 1537]
- (4) Feedlots, provided that a feedlot permit is obtained from the Minnesota Pollution Control Agency.
- (5) Home occupations that are not accessory uses but meet the following criteria:
 - (a) The home occupation is clearly incidental and secondary to the residential use of the property and does not change the character thereof.
 - (b) Nothing is discernable to surrounding properties indicating that a home occupation is being conducted except for a vehicle (otherwise permitted by Section 11-1800) whose nature or signage indicate it is used in the business. There is no outdoor storage or display of equipment or materials used in the home occupation.
 - (c) No external alterations are made that are not customarily found in dwellings.
 - (d) If the home occupation is carried on in the garage, the minimum amount of required garage space is maintained as garage space.
 - (e) All vehicles brought to the property in conjunction with the business are parked in the driveway. Residents' vehicles are not parked in the streets to provide these driveway parking spaces. No parking spaces are improved to provide for the home occupation. Any vehicle whose nature or signage indicate it is used in the business is parked in the driveway or garage.
 - (f) No more than one person who does not reside on the premises works on the premises. Prior to the approval of such a conditional use permit the Planning Commission

shall make a finding that the home occupation would not otherwise require a conditional use permit and that impact of such a home occupation on the surrounding neighborhood is no greater than that of a home occupation without such a worker that requires a conditional use permit.

(g) The home occupation is serviced by delivery vehicles no larger than 26,000 gross vehicle weight.[Revised 12/11/90, Ordinance 1361]

(h) The following home occupations are prohibited: repair of internal combustion engines of more than 12 horsepower; body shops; machine shops; welding; ammunition manufacturing; flea markets; motor vehicle repair maintenance, service or sale; firearm sales; tattoo parlors or other objectionable uses as determined by the City Council. Machine shops are defined as places where raw metal is fabricated, using machines that operate on more than 110 volts of current.[Revised 6/04/91, Ordinance 1378][Revised 9/5/95, Ordinance 1536]

(i) A conditional use permit may not authorize the keeping of more vehicles on a parcel than authorized by 11-1800.

(j) These home occupations include, but are not limited to, the following: beauty shops, taxidermy shops, antique shops, repair shops, seamstress/tailoring/alteration shops, catering, photography studio, clock making shops, pet grooming, repair of small internal combustion engines of 12 horsepower or less, upholstery shops, accounting, bookkeeping and medical practitioner's office.[Revised 6/04/91, Ordinance 1378]

(6) Marinas and related uses.

(7) Mining as regulated under Chapter 11-2000.

(8) Public buildings and major utility structures, including the following:

(a) Water pump houses shall conform to principal building setbacks.

(b) Electric power substations shall conform to the principal building setbacks and have a landscaped yard. Electric power substations shall be screened in accordance with Section 11-1838.

(c) Water towers shall conform to principal building setbacks.

(d) High voltage transmission lines shall, whenever possible, be located to avoid diagonal divisions of land.

(e) Railroad uses may include through railroad tracks, but not switching or storage yards.

(f) Any principal public building, other than utility structures.

(9) Private stables on less than five acres.

(10) Public and boarding stables as regulated under Chapter 6-300.

(11) Recreational facilities such as country clubs, community recreation buildings, golf courses, archery ranges, or trapshooting ranges.

(12) Architecturally-designed earth-sheltered single-family dwelling units not otherwise meeting all the provisions of this Code.

(13) State licensed community correctional facilities.[Revised 9/5/95, Ordinance 1537]

11-605 District Standards. The District Standards shall be as follows:

(1) Building Height. The maximum building height shall be 35 feet for principal structures and 20 feet for accessory structures. An accessory structure shall not exceed the height of principal building, except when on a farm and related to a farming operation.

(2) Building Width. The minimum building width shall be 20 feet over a minimum of 50 percent of building length.

(3) Finished Floor Area. The minimum finished floor area shall be 1,200 square feet at or above lot grade. Lot grade for purposes of this Section means the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the side lot lines, or, when the side lot line is more than five feet from the building, between the building and a line five feet from the building.

(4) Foundation. All residential living space must have a perimeter foundation meeting the requirements of the Minnesota State Building Code as adopted by the City. For the purposes of this paragraph, "residential living space" includes, but is not limited to, all areas of a dwelling suitable and intended for living such as areas for sleeping, eating, or cooking as well as adjunct areas such as bathrooms, closets, halls, storage and utility space, and attached garages, but shall exclude three season porches and similar, unheated appurtenant structures.[Revised 4/6/99, Ordinance 1660]

(5) Garage/Storage and Other Accessory Structures.

(a) Each dwelling is permitted one detached garage/storage structure of up to 1200 square feet in floor area less the floor area of any garage/storage space attached to the principal structure. The total floor area of garage/storage space, detached and attached to the principal structure, shall not exceed 1200 square feet. Notwithstanding the preceding, the maximum floor area of garage/storage space attached to the principal structure may be increased up to 1600 square feet in lieu of any detached garage/storage structure and any free standing accessory structures otherwise permitted under paragraph (b) of this Section, if the total floor area of any attached garage/storage space does not exceed 80 percent of the finished floor area of the principal structure. At least 484 square feet in floor area of garage/storage structure per dwelling shall be accessible to vehicle storage and shall have a minimum width of 22 feet and a minimum depth of 22 feet. The minimum width of a detached garage/storage structure may be reduced to 12 feet provided the total floor area of the detached garage/structure and an attached garage/storage structure equals or exceeds 528 square feet and the attached garage/storage structure has a minimum width of 12 feet and a minimum depth of 22 feet. Detached garage/storage structures in excess of 900 square feet in floor area shall meet the same setback requirements as the principal structure. The architectural style, color, and facing material of a garage/storage structure shall be compatible with the principal structure.[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605][Revised 2/15/00, Ordinance 1687][Revised 6/4/02, Ordinance 1764][Revised 6/3/03, Ordinance 1804]

(b) In addition to structures provided for in Section 11-605(5)(a) above, each dwelling is permitted other freestanding accessory structures such as an outdoor living room, fish house, gazebo, greenhouse, or playhouse. No accessory structure permitted under this subsection, whether of singular or multiple use, shall exceed 200 square feet in floor area. No accessory structure permitted under this subsection shall have a door exceeding six feet in width. The total floor area of all such accessory structures permitted under this subsection shall not exceed 400 square feet.[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605][Revised 2/15/00, Ordinance 1687]

(c) The number of detached garage/storage structures and other accessory structures shall not exceed three per dwelling.[Revised 2/4/97, Ordinance 1597]

(d) No accessory structure shall be constructed on any lot prior to the time of construction of the principal structure.[Revised 2/4/97, Ordinance 1597]

(e) An accessory structure larger than 120 square feet of floor area so located such that any one of its walls is within six feet of a wall of any other structure shall be attached to and made structurally part of the other structure.[Revised 2/4/97, Ordinance 1597]

[Revised 12/2/97, Ordinance 1624][Revised 2/15/00, Ordinance 1687][Revised 9/2/03, Ordinance 1815]

(f) An accessory structure 120 square feet in floor area or larger shall have a permanent concrete slab under the entire structure.[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605][Revised 12/2/97, Ordinance 1624]

(g) For the purpose of this section, floor area shall mean the gross horizontal area of the main floor of a structure plus the horizontal area of any other floor level having a minimum vertical clearance or ceiling height of five feet.[Revised 6/3/97, Ordinance 1605]

(h) Accessory structures other than garage/storage structures shall not be used for the storage of motor vehicles or major recreational equipment.[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605]

(i) The lot coverage restriction of Section 11-605(8) shall apply to all structures permitted by this Section 11-605(5).[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605]

(6) Landscaping. The following minimum landscaping shall be provided:

(a) The front yard setback of all single-family lots shall contain sod or alternate landscaping.

(b) The boulevard area abutting each lot shall be sodded and shall contain at least one tree with a minimum caliper of two inches per unit on each street frontage.

(7) Lot Area. The minimum lot area shall be 15,000 square feet, except that a corner lot shall contain a minimum of 16,500 square feet. The area of a lot abutting a railroad or arterial street right-of-way shall be increased by the area of the buffer strip required under Section 11-605(9)(b).

(8) Lot Coverage. No more than 30 percent of the lot area shall be covered by buildings, drives, and parking areas. For the purposes of computing lot coverage under this provision, houses that do not have the minimum finished floor area required by this Code shall be assumed to have such minimum finished floor area, and properties with less than the minimum driveway requirements of this Code shall be assumed to have such minimum driveway requirements.[Revised 2/15/00, Ordinance 1687]

(9) Lot Dimensions. The minimum lot dimensions, measured in feet, shall be as follows:

<u>Use</u>	<u>Width</u>	Corner Lot	
		<u>Width</u>	<u>Depth</u>
Single family	100	110	150

(b) Where a lot abuts a railroad or arterial street right-of-way, a buffer strip of at least 30 feet in depth shall be added to the lot's side adjacent to abutting the right-of-way. Such buffer strips shall be landscaped pursuant to Section 11-1838.

(c) A lot fronting on a cul-de-sac shall have a minimum depth of 120 feet and such lot shall have a minimum 20 feet of street frontage. Lot area requirements shall be maintained.

(d) Lots fronting on Mississippi Boulevard and having the Mississippi River as the rear lot line shall not be further developed or subdivided in such a manner that their existing lot depths are reduced.[Revised 12/21/04, Ordinance 1859]

(10) Parking and Drives.

(a) The minimum number of required off-street parking spaces shall be three per dwelling unit. At least two spaces per dwelling unit shall consist of an enclosed garage.

(b) A driveway shall have a minimum width within the street right-of-way of 10 feet per dwelling unit, excluding the entrance radii. Within the street right-of-way, the total width of all driveways accessing the same street frontage shall not exceed 24 feet per dwelling unit, excluding the entrance radii.

(c) No more than 50 percent of the lot area located between the structure and the front property line may be improved as driveway and parking surfaces, provided, however, that the maximum pavement width, excluding a required turnaround, shall not exceed 36 feet.

(d) Driveways shall be permitted to be constructed up to the property line. However, driveways and parking shall not be located within the sight triangle described in Subsection 11-1825(1).

(e) All driveways and parking areas shall be improved with concrete, bituminous, brick pavers or similar hard surfaced material as approved by the Chief Building Official, provided, however, that on a lot which has the shoreline of the Mississippi River as the rear lot line, all driveways and parking areas shall be so improved for the first 100 feet of lot depth. Other materials, including decorative landscape rock, crushed rock, gravel, sand, bare soil, or similar materials shall be prohibited for use as a driveway or parking surfaces. Driveways shall be constructed and maintained according to standards on file in the office of the Chief Building Official. If the roadway is not paved, the driveway need not be paved until such time as the owner is given notice by the Zoning Administrator. Within 30 days after completion of the paving of the roadway, the Zoning Administrator shall notify the owner in writing that the driveway must be paved. The notice shall specify a date for completion of the driveway paving, which date shall be no less than six months nor more than one year from the date of the notice.

(f) Driveway access to arterial and collector streets shall be prohibited, unless approved by the City Council. Where a driveway access is permitted to an arterial street or collector street, a driveway turnaround shall be provided in order to eliminate the need for vehicles to back onto the street when exiting.

(g) Parking shall be prohibited within the front and side yards except on improved surfaces provided, however, on a lot which has the shoreline of the Mississippi River as the rear lot line, parking shall be prohibited within the first 100 feet of lot depth except on improved surfaces. [Revised 12/05/00, Ordinance 1716]

(11) Setbacks.

(a) The minimum setbacks, measured in feet, shall be as follows:

<u>Structure</u>	<u>Front Yard</u>	<u>Rear Yard</u>	<u>Side Yard Street*</u>	<u>Side Yard Interior</u>
Principal Structure:				
Living Space	40'	50'	20'	15'
Attached Garage	40'	50'	20'	10'
Porch, Screen Porch, Three-Season Porch,				
Other Attached Structures with a roof.....	40'	50'	20'	15'
Attached Deck or Balcony	40'	35'	20'	10'
Gazebo or Outdoor Living Room Connected				
to Principal Structure by Unroofed Deck	40'	35'	20'	15'

Accessory Structures:

Detached Garage/Storage Space under 900 square feet	40'	10'	20'	10'
Detached Garage/Storage Space 900 square feet or over	40'	50'	20'	15'
Detached Deck (other than swimming pool deck)	40'	10'	20'	10'
Detached Gazebo or Outdoor Living Room.....	40'	15'	20'	15'
Playhouse, Greenhouse, Similar Structures	40'	15'	20'	15'

Hard-Surfaced Areas:

Patio	25'	5'	5'	5'
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[Revised 4/3/01 Ordinance 1727]

* If the front of the principal structure faces the street side lot line rather than the front lot line then the front yard setbacks requirements shall also apply to the street side yard.

- (b) The following shall not be considered as encroachments on setback requirements:
- In any yard: awnings, steps, or chimneys that are no closer than five feet to any lot line, underground garages that are no closer than 10 feet to a lot line, flag poles, light poles, and public utilities (subject to the requirements of Section 11-604(8)).

- Roof eaves, overhangs, and similar appurtenances shall not encroach more than two feet into a setback area.[Revised 3/18/08, Ordinance 1976][Revised 12/16/08, Ordinance 1997]

(c) An accessory structure shall not be located nearer to the front lot line than the principal building except on a lot which has the shoreline of the Mississippi River or Crooked Lake as the rear lot line. On a corner lot, if the front of the principal structure faces the street side lot line, an accessory structure shall not be located nearer to the street side lot line than the principal building.

(d) On a corner lot when the front of the principal structure faces the street side lot line, the rear yard setback requirements and the interior side yard setback requirements may be exchanged.

- (e) The following shall meet the setback requirements of the Office Zoning District:
- Accessory structures for cemeteries.
 - Churches, private schools, nursing homes, hospitals, sanitariums and similar institutions.
 - State licensed residential facilities serving seven or more persons.
 - Principal public buildings.
 - Principal buildings for recreational facilities.

(f) Notwithstanding any provisions herein to the contrary, the Community Development Director or designee may approve a deck which encroaches up to 10 feet into the required front setback provided:[Revised 12/2/97, Ordinance 1625]

- The deck does not exceed 100 square feet in area;
- The deck provides access to the main entrance of the dwelling.
- Except for steps or a handicapped access ramp, the deck is at least 30 feet from the front lot line, five feet from an interior lot line and 20 feet from a street side lot line;[Revised 12/2/97, Ordinance 1625]

- iv. The floor of the deck is no higher than the threshold of the main entrance;
- v. The underside of the deck is screened with a material that is at least 50 percent opaque; and
- vi. The deck is architecturally compatible with the dwelling.[Revised 12/3/96, Ordinance 1588]

(12) Variable Setback Plan. Notwithstanding the provisions of this Chapter to the contrary, in order to provide maximum flexibility to owners of property on which construction has not occurred, the owner may elect to adopt a variable setback plan. Under the plan, the front yard setback may be reduced to not less than 35 feet, providing the following conditions are met:

- (a) The minimum average setback of all structures on the same side of the street in a single block shall be at least 40 feet.
- (b) The maximum difference in setback on two contiguous lots shall be 10 feet.
- (c) If a difference in setback is required, the minimum difference on two contiguous lots shall be two feet.
- (d) No more than two contiguous lots shall have the same front yard setback.
- (e) Any lot in a proposed development that is adjacent to a previously developed lot shall use the standard minimum front yard setback.
- (f) This option shall apply only to a minimum of four or more contiguous lots on the same side of the street in a single block.
- (g) The owner shall adopt the variable plan by filing with the Community Development Director a map of the lots affected. The map shall show in sufficient detail the setback selected for each such lot. The owner shall include in any instrument conveying title to such lot a stipulation of the designated setback for such lot. Prior to the conveyance of the first lot included in such plan, the owner may file with the Community Development Director an amended plan revising the setbacks; provided, however, that the amended plan meets all of the requirements of this Section. After the sale of the first lot included in such plan, no changes may be made unless agreed to by at least 75 percent of the owners of lots included in the plan and provided that the change meets all of the requirements of this Section. Such changes shall be made in the form of an amended plan filed with the Community Development Director and signed by the required number of owners.

11-606 Site Plan Approval. Site plan approval by the Planning Commission shall be required for all conditional uses indicated in this Chapter. Site plan approval shall be pursuant to Sections 11-320 through 11-328.

Effective
2-8-1976

CHAPTER 11-600

(R-1) SINGLE FAMILY DISTRICT

11-601 Intent. Because of favorable topographic characteristics and proximity to the shoreline of the Mississippi River, these districts in the City are reserved for housing of a larger size and lower density than other districts in the City. Minimum lot sizes and building area are established to preserve the residential character of these areas.

11-602 Permitted Uses.

- (1) One detached single family dwelling unit per lot;
- (2) Agricultural, except feedlots;
- (3) Public parks and their incidental structures;
- (4) Public uses or utilities, except major buildings, substations, towers or high voltage transmission lines.

11-603 Accessory Uses.

(1) Private garages containing not less than 300 square feet and not more than 75 percent of the floor area of the dwelling unit to which the garage is an accessory use. A garage shall not exceed 900 square feet in area. The architectural style and facing material of a garage shall be compatible with the dwelling unit. All garages shall have a paved driveway in accordance with specifications on file with the Chief Building Official.

(2) Each single family dwelling shall be permitted one attached outdoor living room of up to 400 square feet. An outdoor living room or patio shall not be used for the storage of automobiles or trucks.

(3) Other detached accessory structures such as greenhouses, sheds and playhouses incidental to the dwelling unit. No such structures shall exceed 400 square feet.

(4) Kennels in accordance with Chapter 6-200.

(5) Home Occupations meeting the following criteria:

(a) Any gainful occupation engaged in by the occupant of a dwelling when carried on within a dwelling unit and not in an accessory building and which is clearly incidental and secondary to the residential use of the premises and does not change the character thereof.

(b) Permissible home occupations include, but are not limited to, the following: art studios, dressmaking or professional offices.

(c) Permissible home occupations shall not include teaching of more than 4 pupils at one time, a manufacturing business or a repair shop. No stock in trade shall be sold from the home except by mail. No one other than persons residing on the premises shall be involved in the occupation and no mechanical equipment shall be kept on the premises that is not customarily found in the home.

(d) A home occupation shall not require internal or external alterations not customarily found in dwellings.

(e) There shall be no exterior display or exterior signs except for one sign meeting the City's sign regulations for the zoning district in which the home occupation is located. There shall be no exterior storage of equipment or materials used in the home occupation, except that personal automobiles used in the home occupation may be parked on the site in accordance with Section 11-1828.

(6) Off-street parking as regulated under Section 11-1813(4).

(7) Patios and tennis courts.

(8) Private stables on a minimum of 5 acres.

(9) Private swimming pools as regulated under Chapter 12-500.

(10) Renting of rooms for not more than 2 roomers per dwelling unit.

(11) Signs as regulated under Chapter 11-2100.

(12) Phone booths, bus shelters and other such incidental structures.

11-604 Special Uses.

(1) Cemeteries and their accessory structures.

(2) Churches, private schools, nursing and boarding care homes, hospitals, sanitariums, rest, boarding or group homes and similar institutions.

(3) Day care centers and group family day care centers, provided that any outdoor play area is fenced.

(4) Feedlots, provided that a feedlot permit is obtained from the Minnesota Pollution Control Agency.

(5) Greenhouses.

(6) Home Occupations, Special:

(a) A home occupation which does not meet the requirements of a permitted home occupation.

(b) Such occupation shall be clearly incidental and secondary to the residential use of the premises, shall not change the residential character thereof and shall be compatible with surrounding residences.

(c) Such occupation shall meet the following requirements, except that the requirements may be waived if the occupation is located above the City's Development District and is located at least 350 feet from an adjoining residential use:

- i. Nothing shall be visible to surrounding residential properties indicating that a home occupation is being conducted from the dwelling, except for one sign meeting the requirements of Chapter 11-2100;
 - ii. No equipment shall be used in the home occupation which will create electrical interference to surrounding properties;
 - iii. The home occupation shall not require additional parking spaces to be paved on the subject property to accommodate the home occupation;
 - iv. No person who does not reside on the property shall be engaged in the home occupation;
 - v. A home occupation shall not include the repair of internal combustion engines, body shops, machine shops, welding, ammunition manufacturing or other objectionable uses as determined by the City Council. Machine shops are defined as places where raw metal is fabricated, using machines that operate on more than 110 volts of current.
- (7) Marinas and related uses.
 - (8) Mining as regulated under Chapter 11-2000.
 - (9) Off-street parking for adjacent multiple, commercial or industrial uses, provided that the parking is restricted to automobiles.
 - (10) Public buildings and major utility structures, including the following:
 - (a) Water pump houses shall conform to accessory building setbacks.
 - (b) Electric power substations shall conform to the required setback requirements and have a landscaped yard. Electric power substations shall be screened in accordance with Section 11-1838.
 - (c) Water towers shall be in conformance with all yard requirements.
 - (d) High voltage transmission lines shall, wherever possible, be located to avoid diagonal divisions of land.
 - (e) Railroad uses may include through railroad tracks, but not switching or storage yards.
 - (f) Any principal public building, other than utility structures.
 - (11) Private stables on less than 5 acres.
 - (12) Public stables as regulated under Chapter 6-300.
 - (13) Recreational facilities such as country clubs, community recreation buildings, golf courses, archery ranges or trapshooting ranges.

11-605 District Standards. The District Standards shall be as follows:

- (1) Minimum Accessory Building Setbacks. No accessory building shall be located within the required front setback area or within 10 feet of a lot line, except that this shall be increased to 20 feet if the sideyard adjoins a public right-of-way.

(2) Maximum Building Height. 35 feet for principal structures and 20 feet for accessory buildings.

(3) Minimum Floor Area. 1200 square feet.

(4) Minimum Lot Area. 15,000 square feet.

(5) Maximum Lot Coverage. No more than 20% of the lot area shall be covered by buildings.

(6) Minimum Lot Depth and Width. Single family lots shall have a minimum depth of 150 feet and a minimum width of 100 feet. A corner lot for a single family home shall have a minimum width of 110 feet.

(7) Minimum Setbacks required for Primary Structures.

(a) Front yard setback--40 feet.

(b) Side yard setback--15 feet on a house side and 10 feet on a garage side, except that this shall be increased to 20 feet if the side yard adjoins a public right-of-way. If no other arrangement is practical, the Board of Zoning Adjustment may permit less than the required setback.

(c) Rear yard setback--50 feet.

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 11-700

LOW-DENSITY RESIDENTIAL DISTRICT (LDR-2)

11-701 Intent. This district is intended to provide land for attractive and diverse residential developments of single-family dwellings.[Revised 9/4/01, Ordinance 1737][Revised 12/7/04, Ordinance 1857]

11-702 Permitted Uses.

- (1) One detached single-family dwelling unit per lot.
- (2) Agricultural, except feedlots.
- (3) Public uses or utilities, except major buildings, substations, towers, or high-voltage transmission lines.
- (4) State licensed community residential facilities serving six or fewer persons, State licensed day care facilities serving 12 or fewer persons or group family day care facilities serving 14 or fewer children.[Revised 9/5/95, Ordinance 1537]

11-703 Accessory Uses. Any accessory use that is permitted under Section 11-603.

11-704 Conditional Uses.

- (1) Any conditional use that is listed under Section 11-604.
- (2) Two-family dwellings approved by the City prior to January 1, 2005. All approved two-family dwelling units shall comply with design standards on file in the office of the Community Development Director.[Revised 12/7/04, Ordinance 1857].

11-705 District Standards. The District Standards shall be as follows:

(1) Building Height. The maximum building height shall be 40 feet for principal structures and 20 feet for accessory structures. An accessory structure shall not exceed the height of a principal building, except when on a farm and related to a farming operation.

(2) Building Width. The minimum building width shall be 20 feet over a minimum of 50 percent of building length.

(3) Finished Floor Area. The minimum finished floor area shall be as follows:

	<u>Minimum Finished Floor Area</u>	<u>Minimum Finished Floor Area at or Above Lot Grade</u>
<u>Single-Family:</u>	960 sq. ft.720 sq. ft.
<u>Two-Family:</u>	1 bedroom	700 sq. ft./unit.....600 sq. ft./unit
	2 bedrooms.....	800 sq. ft./unit.....600 sq. ft./unit
	3 or more bedrooms	960 sq. ft./unit.....720 sq. ft./unit

At least two-thirds of the minimum finished floor area at or above lot grade must be on a single floor, provided that if the building has three or more floors at or above grade, at least one-half of the minimum finished floor area must be on a single floor.

Lot grade for purposes of this Section means the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the side lot lines or, when the side lot line is more than five feet from the building, between the building and a line five feet from the building.

(4) Foundation. All residential living space must have a perimeter foundation meeting the requirements of the Minnesota State Building Code as adopted by the City. For the purposes of this paragraph, "residential living space" includes, but is not limited to, all areas of a dwelling suitable and intended for living such as areas for sleeping, eating, or cooking as well as adjunct areas such as bathrooms, closets, halls, storage and utility space, and attached garages, but shall exclude three-season porches and similar, unheated appurtenant structures.[Revised 4/6/99, Ordinance 1660]

(5) Garage/Storage Structures and Accessory Structures.

(a) Each single family dwelling or two family dwelling unit is permitted one detached garage/storage structure of up to 1200 square feet in floor area less the floor area of any garage/storage space attached to the principal structure. The total floor area of garage/storage space, detached and attached to the principal structure, shall not exceed 1200 square feet. At least 484 square feet in floor area of garage/storage structure per single family dwelling shall be accessible to vehicle storage and shall have a minimum width of 22 feet and a minimum depth of 22 feet. The minimum width of a detached garage/storage structure may be reduced to 12 feet provided the total floor area of the detached garage/structure and an attached garage/storage structure equals or exceeds 528 square feet and the attached garage/storage structure has a minimum width of 12 feet and a minimum depth of 22 feet. At least 264 square feet in floor area of garage/storage structure per two family dwelling unit shall be accessible to vehicle storage and shall have a minimum width of 12 feet and a minimum depth of 22 feet. Detached garage/storage structures in excess of 900 square feet in floor area shall meet the same setback requirements as the principal structure. The architectural style, color, and facing material of a garage/storage structure shall be compatible with the principal structure. [Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605][Revised 2/15/00, Ordinance 1687]

[Revised 6/3/03, Ordinance 1804]

(b) In addition to structures provided for in Section 11-705(5)(a) above, each dwelling or dwelling unit is permitted other freestanding accessory structures such as an outdoor living room, fish house, gazebo, greenhouse, or playhouse. No accessory structure permitted under this subsection, whether of singular or multiple use, shall exceed 200 square feet in floor area. No accessory structure permitted under this subsection shall have a door exceeding six feet in width. The total floor area of all such accessory structures permitted under this subsection shall not exceed 400 square feet.[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605][Revised 2/15/00, Ordinance 1687]

(c) The number of detached garage/storage structures and other accessory structures shall not exceed three per dwelling. [Revised 2/4/97, Ordinance 1597]

(d) No accessory structure shall be constructed on any lot prior to the time of construction of the principal structure.[Revised 2/4/97, Ordinance 1597]

(e) An accessory structure larger than 120 square feet of floor area so located such that any one of its walls is within six feet of a wall of any other structure shall be attached to and made structurally part of the other structure.[Revised 2/4/97, Ordinance 1597][Revised 12/2/97, Ordinance 1624][Revised 9/2/03, Ordinance 1815]

(f) An accessory structure 120 square feet in floor area or larger shall have a permanent concrete slab under the entire structure.[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605][Revised 12/2/97, Ordinance 1624]

(g) For the purpose of this section, floor area shall mean the gross horizontal area of the main floor of a structure plus the horizontal area of any other floor level having a minimum vertical clearance or ceiling height of five feet.[Revised 6/3/97, Ordinance 1605]

(h) Accessory structures other than garage/storage structures shall not be used for the storage of motor vehicles or major recreational equipment.[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605]

(i) The lot coverage restriction of Section 11-705(8) shall apply to all structures permitted by this Section 11-705(5).[Revised 2/4/97, Ordinance 1597][Revised 6/3/97, Ordinance 1605]

(6) Landscaping. The following minimum landscaping shall be provided:

(a) The front yard setback of all single-family lots shall contain sod or alternate landscaping.

(b) The entire yard of all two-family lots shall contain sod or alternate landscaping except that any undisturbed area beyond the first 135 feet of lot depth may be left in its natural vegetative state.

(c) The boulevard area abutting each lot shall be sodded and shall contain at least one tree with a minimum caliper of two inches per unit on each street frontage.

(7) Lot Area.

(a) The minimum lot area for a single-family home shall be 10,800 square feet, except that a corner lot shall contain a minimum of 12,150 square feet.

(b) The minimum lot area for a two-family dwelling shall be 14,850 square feet, except that a corner lot shall contain a minimum of 16,200 square feet.

(c) For zero lot line two-family dwellings, the minimum lot area for each unit shall be 7,425 square feet.

(d) The area of a lot abutting a railroad or arterial street right-of-way shall be increased by the area of the buffer strip required by Section 11-705(9)(b).

(8) Lot Coverage. No more than 30 percent of the lot area shall be covered by buildings, drives, and parking areas. For the purposes of computing lot coverage under this provision, dwelling units that do not have the minimum finished floor area required by this Code shall be assumed to have such minimum finished floor area and properties with less than the minimum driveway requirements of this Code shall be assumed to have such minimum driveway requirements.[Revised 2/15/00, Ordinance 1687]

(9) Lot Dimensions.

(a) The minimum lot dimensions, measured in feet, shall be:

<u>Use</u>	<u>Width</u>	<u>Corner Lot</u>	
		<u>Width</u>	<u>Depth</u>
Single family	80.....	90.....	135
Two family	110.....	120.....	135

(b) Where a lot abuts a railroad or arterial street right-of-way, a buffer strip of at least 30 feet in depth shall be added to the lot's side adjacent to abutting the right-of-way. Such buffer strips shall be landscaped pursuant to Section 11-1838.

(c) A lot fronting on a cul-de-sac shall have a minimum depth of 105 feet and such lot shall have a minimum 20 feet of street frontage, except that this shall be increased to a minimum 40 feet of street frontage for a two-family dwelling. Lot area requirements shall be maintained.

(10) Parking and Drives.

(a) The minimum number of required off-street parking spaces for a single family dwelling is three. At least two spaces must consist of an enclosed garage.

(b) A driveway must have a minimum width within the street right-of-way of 10 feet per dwelling unit, excluding the entrance radii. Within the street right-of-way, the total width of all driveways accessing the same street frontage must not exceed 24 feet per dwelling unit, excluding the entrance radii.

(c) No more than 50 percent of the lot area located between the structure and the front property line may be improved as driveway and parking surfaces, provided, however, that the maximum pavement width, excluding a required turnaround, must not exceed 36 feet.

(d) Driveways may be permitted to be constructed up to the property line. However, driveways and parking must not be located within the sight triangle described in Subsection 11-1825(1).

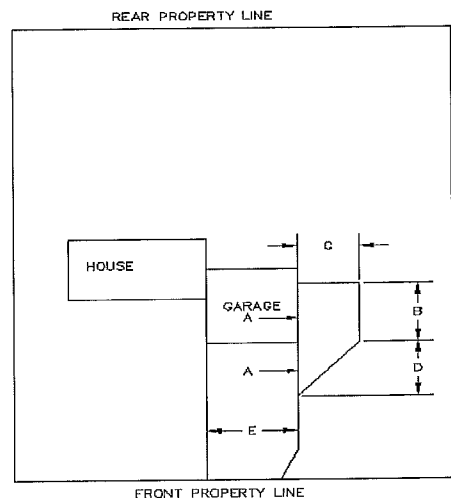
(e) All driveways and parking areas must be improved with concrete, bituminous, brick pavers or similar hard surfaced material as approved by the Chief Building Official. Other materials, including decorative landscape rock, crushed rock, gravel, sand, bare soil, or similar materials, are prohibited for use as driveway. Driveways must be constructed and maintained according to standards on file in the office of the Chief Building Official.

(f) Off-Drive Parking Areas:

- i. Must be within five feet of the side of the garage and attached to the driveway. (Arrows A in Figure A)
- ii. Must not extend more than 24 feet from the front of the garage to the rear. (Arrow B in Figure A).
- iii. May extend to the side property line, provided, it is no wider than 12 feet. (Arrow C in Figure A).
- iv. Must not extend more than 20 feet from the front of the garage towards the street. (Arrow D in Figure A)
- v. The total width of the driveway (Arrow E in Figure A) and the Off-Drive Parking Area (Arrow C in Figure A) cannot not exceed 40 feet or 50 percent of the lot width.[Revised 8/8/12 Ordinance 2092]

(g) Off-Drive Parking Areas must be finished with an improved surface material, permeable pavers, patio blocks or concrete pavers, porous paving grids or similar material as approved by the Director. Washed ¾ inch fractured stone may be used as a surface material for that part of the parking area located behind the front line of the garage. The finished area must be a continuous surface, of sufficient width to so as to

FIGURE A



include the drip line of the vehicle that is parked on it and maintained weed free. The finished material must be installed per standards on file with the city or per manufacture's specifications.[Revised 8/8/12 Ordinance 2092]

(h) Driveway access to arterial and collector streets is prohibited, unless approved by the City Council. Where a driveway access is permitted to an arterial or collector street, a driveway turnaround must be provided in order to eliminate the need for vehicles to back onto the street when exiting.

(i) Parking within the front and side yards must be on a driveway or off drive parking area.[Revised 12/05/00 Ordinance 1716][Revised 8/8/12 Ordinance 2092]

(11) Setbacks.

(a) The minimum setbacks, measured in feet, shall be as follows:

<u>Structure</u>	<u>Front Yard</u>	<u>Rear Yard</u>	<u>Side Yard Street*</u>	<u>Side Yard Interior</u>
Principal Structure:				
Living Space.....	35'	35'	20'	10'
Attached Garage.....	35'	35'	20'	5'
Porch, Screen Porch, Three- Season Porch, Other Attached Structures with a roof.....	35'	35'	20'	10'
Attached Deck or Balcony	35'	20'	20'	5'
Gazebo or Outdoor Living Room Connected to Principal Structure by Unroofed Deck	35'	20'	20'	10'
Accessory Structures:				
Detached Garage/Storage Space under 900 square feet.....	35'	5'	20'	5'
Detached Garage/Storage Space 900 square feet and over	35'	35'	20'	10'
Detached Deck (other than swimming pool deck).....	35'	5'	20'	5'
Detached Gazebo or Outdoor Living Room	35'	10'	20'	10'
Playhouse, Greenhouse, Similar Structures.....	35'	10'	20'	10'

Hard-Surfaced Areas:

Patio.....20'.....5'..... 5'5'

[Revised 4/3/01 Ordinance 1727]

* If the front of the principal structure faces the street side lot line rather than the front lot line then the front yard setback requirements shall also apply to the street side yard.

(b) The following shall not be considered as encroachments on setback requirements:

i. In any yard: awnings, steps, or chimneys that are no closer than five feet to any lot line, underground garages that are no closer than 10 feet to a lot line, flag poles, light poles, and public utilities (subject to the requirements of Section 11-604(8)).

ii. Roof eaves, overhangs and similar appurtenances shall not encroach more than two feet into a setback area.[Revised 3/18/08, Ordinance 1976][Revised 12/16/08, Ordinance 1997]

(c) An accessory structure shall not be located nearer to the front lot line than the principal building except on a lot which has the shoreline of the Mississippi River or Crooked Lake as the rear lot line. On a corner lot, if the front of the principal structure faces the street side lot line, an accessory structure shall not be located nearer to the street side lot line than the principal building.

(d) Notwithstanding the provisions of this Chapter to the contrary the Board of Adjustment and Appeals may permit the rear yard setback for porches including attached outdoor living rooms and three-season porches, to be reduced to not less than 20 feet if no other arrangement is practical, and provided further:

i. The rear property line abuts a park or other publicly owned property, except public rights-of-way,

ii. The porch will not be detrimental to the neighborhood or the public welfare,

iii. The porch is architecturally compatible with the primary structure and

iv. The porch will not be incorporated into the year round living space of the primary structure.

(e) On a corner lot when the front of the principal structure faces the street side lot line, the rear yard setback requirements and the interior side yard setback requirements may be exchanged.

(f) The following shall meet the setback requirements of the Office Zoning District:

i. Accessory structures for cemeteries.

ii. Churches, private schools, nursing homes, hospitals, sanitariums and similar institutions.

iii. State licensed residential facilities serving seven or more persons.

iv. Principal public buildings.

v. Principal buildings for recreational facilities.

(g) Notwithstanding any provisions herein to the contrary, the Community Development Director or designee may approve a deck which encroaches up to 10 feet in the required front setback provided:[Revised 12/2/97, Ordinance 1625]

i. The deck does not exceed 100 square feet in area;

ii. The deck provides access to the main entrance of the dwelling;

iii. Except for steps or a handicapped access ramp, the deck is at least 25 feet from the front lot line, five feet from an interior lot line and 20 feet from a street side lot line;[Revised 12/2/97, Ordinance 1625]

iv. The floor of the deck is no higher than the threshold of the main entrance;

v. The underside of the deck is screened with a material that is at least 50 percent opaque; and

vi. The deck is architecturally compatible with the dwelling.[Revised 12/3/96, Ordinance 1588]

(12) Reduced Front Yard Setback Permitted. Notwithstanding the provisions of this Chapter to the contrary, the Board of Adjustment and Appeals may permit the front yard setback to be reduced to not less than 25 feet on a property on which is constructed a principal structure,

if no other arrangement is practical; provided, however, that the Board may permit such variance for either the principal structure or garage, but not both; and provided, further, that if the variance is given for the garage, the Board shall require at least three paved on-site parking spaces whenever practical. Parking spaces within the garage shall be considered as on-site parking spaces for purposes of this Section.

(13) Variable Setback Plan. Notwithstanding the provisions of this Chapter to the contrary, in order to provide maximum flexibility to owners of property on which construction has not occurred, the owner may elect to adopt a variable setback plan. Under the plan, the setback for a structure may be reduced to not less than 30 feet, providing the following conditions are met:

(a) A minimum average setback of all structures on the same side of the street in a single block shall be at least 35 feet.

(b) The maximum difference in setback on two contiguous lots shall be 10 feet.

(c) If a difference in setback is required, the minimum difference on two contiguous lots shall be two feet.

(d) No more than two contiguous lots shall have the same front yard setback.

(e) Any lot in a proposed development that is adjacent to a previously developed lot shall use the standard minimum front yard setback.

(f) This option shall apply only to a minimum of four or more contiguous lots on the same side of the street in a single block.

(g) The owner shall adopt the variable plan by filing with the Community Development Director a map of the lots affected. The map shall show in sufficient detail the setback selected for each such lot. The owner shall include in any instrument conveying title to such lot a stipulation of the designated setback for such lot. Prior to the conveyance of the first lot included in such plan, the owner may file with the Community Development Director an amended plan revising the setbacks; provided, however, that the amended plan meets all of the requirements of this Section. After the sale of the first lot included in such plan, no changes may be made unless agreed to by at least 75 percent of the owners of lots included in the plan and provided that the change meets all of the requirements of this Section. Such changes shall be made in the form of an amended plan filed with the Community Development Director and signed by the required number of owners.

(h) On any lot included in a variable setback plan, the setback for a garage may be reduced to 30 feet, only if there are at least three (3) paved on-site parking spaces. Parking spaces within the garage shall be considered as on-site parking spaces for purposes of this Section.

(14) Zero Lot Line for Two-Family Residential Lots. Notwithstanding the provisions of this Chapter to the contrary, two-family residential lots may be platted or subdivided in such manner that the common boundary line for the residential units will have a zero lot line setback; provided, however, that each such lot meets the following requirements:

(a) Each lot shall have a minimum area of 7,425 square feet.

(b) Separate services shall be furnished to each residential unit for sanitary sewer and water.

(c) Two separate dwelling units are maintained.

(d) The two-family unit shall be constructed in a side-by-side manner.

(e) All zero lot line two-family dwellings shall require a party wall agreement relating, at a minimum, to maintenance of the structure, maintenance of open and/or common space, accessory structures, and exterior decoration. The agreement shall be approved by the City

Attorney and kept on file in the office of the Community Development Director. [Revised 05/07/91, Ordinance 1373]

(15) Repealed August 23, 1988.

11-706 Site Plan Approval. Site plan approval by the Planning Commission shall be required for all conditional uses indicated in this Chapter. Site plan approval shall be pursuant to Sections 11-320 through 11-328.

11-707 Repealed May 12, 1987.

11-708 Exceptions. Notwithstanding any other provisions of this code to the contrary, the following shall be considered conforming two family residential uses:

(a) Two-family dwellings constructed as permitted uses under the two-family dwelling (R-3) zoning district, now repealed.

(b) Two-family dwelling lots on which conditional use permits were granted prior to February 1, 1989, and which meet the following minimum lot dimensions: width 90 feet; corner lot width 100 feet; depth 135 feet.

(c) Zero lot line two-family residential lots on which conditional use permits were granted prior to February 1, 1989 and which have a minimum area of 6,000 square feet per lot.

However, two-family residential uses which cease as such for a continuous period of one year shall not be reverted to two-family residential uses unless they conform with all current code provisions for such uses.

Effective
9-21-2010
Language-

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 6-500

NON-DOMESTIC ANIMALS

6-501 Application. This Chapter shall apply to all animals both domestic and non-domestic, except:

- (1) dogs and cats which are regulated by City Code Chapter 6-100, 6-200, and 6-400; and
- (2) cows or cattle maintained on properties of 20 contiguous acres or more, owned by the same person or entity and zoned LDR-2, where the property is used for agricultural purposes and the amount of cows or cattle maintained is no greater than 30.

6-502 Definitions. For purposes of this Chapter, the following definitions shall apply:

(1) Domestic animals are defined as non-poisonous snakes or snakes not prohibited by this Chapter, birds kept indoors, non-poisonous spiders, turtles, lizards, hamsters, chinchillas, mice, rabbits, gerbils, white rats, guinea pigs, or similar small animals capable of being maintained continuously in cages and indoors.

(2) Non-domestic animals are defined as all other animals such as cows, sheep, pigs, potbellied pigs, bees, goats, swine, llamas, mules, horses or other hoofed animal, chickens, ducks, or other agricultural animals or domestic fowl and any animal, reptile or fowl, which is not naturally tame or gentle but is of a wild nature or disposition or which, because of its vicious nature or other characteristics, would constitute a danger to human life or property including:

- (a) any animal or species prohibited by Minnesota or federal law;
- (b) any skunk, raccoon, badger, weasel, wild ferret or fox, whether captured in the wild, domestically raised, de-scented or not de-scented, vaccinated against rabies or not vaccinated against rabies;
- (c) any cats of the family Felidae, including lions, tigers, jaguars, leopards, cougars, cheetahs, ocelots and servals, but not including commonly accepted domesticated house cats or cats recognized as a domestic breed, registered as a domestic breed, and shown as a domestic breed by a national or international multibreed cat registry association;
- (d) any members of the family Canidae, such as wolves, foxes, coyotes, dingos, jackals but not including domesticated dogs;
- (e) any crossbreeds such as crossbreeds between dogs and coyotes or dogs and wolves, but does not include crossbreeds between domesticated animals;
- (f) any snake, that is a member of the pit viper or Boidae family, including but not limited to copperheads, water moccasins, rattlesnakes, fer-de-lances, bushmasters, asps, cobras, mamba, kraits, coral snakes, sea snakes, South American anacondas, Asian reticulated pythons, boa constrictors, tree boas and sand boas;
- (g) any other snake or reptile which by their size, vicious nature, or other characteristic is dangerous to human beings;
- (h) any poisonous spiders;
- (i) any apes, gorillas, monkeys or other primates;
- (j) any other animals which are not listed explicitly but which can be easily defined as a non-domesticated animal including bears and wolverines.

6-503 Keeping of Non-Domestic Animals.

(1) It shall be unlawful to keep, maintain, harbor, or feed any non-domestic animal within the City except where permitted elsewhere in this Chapter.

(2) Songbird Exception. The feeding of songbirds is permitted under the following conditions:

(a) Feeding occurs from a bird feeder that is designed to prevent other wildlife, including squirrels or waterfowl, from eating from the bird feeder, and

*(b) The bird feeder does not become an attractive nuisance to other wildlife or waterfowl, and

(c) Songbird feeding does not attract songbirds in such numbers that they become a nuisance or that they damage property, and

(d) The storage of songbird feed must be done in a sealed container and in a manner that rodents are not attracted to the feed, and

(e) Songbird feeding occurs on private property owned or controlled by the person responsible for the bird feeder.

6-504 Impounding of Non-Domestic Animals. Any non-domestic animal kept in violation of this Chapter may be impounded by the Animal Control Officer and after being so impounded for five days or more without being redeemed, may be destroyed or otherwise humanely disposed of. Any person reclaiming any such impounded animal shall pay the costs of impounding and keeping the same. At the time of impounding, the Animal Control Officer shall notify the owner, if known, by telephone or personal contact and by written notice to his or her last known address. If the owner is unknown, written notice containing a description of the animal shall be posted at the animal shelter of impoundment and at City Hall. The notice shall advise the owner that he or she has five regular business days to claim and remove the animal from the City. Regular business day means any day during which the animal shelter is open to the public not less than four consecutive hours between the hours of 8:00 a.m. and 7:00 p.m.

6-505 Permitted Use. Use of horses and any accessory stabling of such shall be permitted in public parks on designated bridle paths only.

6-506 Permits. The City Council may grant permits for the keeping of non-domestic animals for use in connection with an exhibition or show only, or by persons keeping animals for a public zoo as volunteers, docents, or otherwise, for a maximum of 30 days provided that the Council finds that such animals are not likely to be dangerous, that they will be kept in safe and sanitary surroundings, that they will not be maintained in an inhumane manner or be subjected to any inhumane treatment, and that their presence on the premises will not be a source of nuisance or annoyance to the occupants of adjacent property. In granting such permit, the Council may impose limitations on the permit to ensure that such animals will be kept under such conditions. It will be unlawful for the permit holder to keep such animals in violation of the limitations imposed by the City Council. Any such permit shall be subject to immediate suspension by the Animal Control Officer if the officer determines that the animals are being kept in a manner which violates the terms of the permit. Such suspension shall remain in effect until the matter is heard before the City Council not less than 10 days or more than 20 days after the suspension. At such meeting the City Council may revoke such permit or may reinstate the same subject to such limitations as the Council shall deem necessary. Applications for permits shall be in a form provided by the City Clerk.

6-507 Penalty. Any person convicted of a violation of any provision of this Chapter will be guilty of a misdemeanor.

6-508 Violation. Each day's violation of the provisions of this Chapter shall constitute a separate offense and shall be punishable as such hereunder.[Adopted 9/21/10, Ordinance 2043]

Effective
9-21-2010
codification

ORDINANCE NO. 2043

AN ORDINANCE TO REGULATE DOMESTIC/NON-DOMESTIC ANIMALS AND
THEREBY AMENDED REVISED CITY CODE - 1982 BY REPEALING
CHAPTER 6-500, NON-DOMESTIC ANIMALS IN ITS ENTIRETY
AND BY ADDING THERETO NEW CHAPTER 6-500

The City of Coon Rapids does ordain:

Section 1. Revised City Code - 1982 Chapter 6-500, Non-Domestic Animals is hereby repealed in its entirety.

Section 2. Section 2. Revised City Code - 1982 is hereby amended by adding thereto Chapter 6-500, Non-Domestic Animals. (Additions double underlined)

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 6-500

NON-DOMESTIC ANIMALS

6-501 Application. This Chapter shall apply to all animals both domestic and non-domestic, except:

- (1) dogs and cats which are regulated by City Code Chapter 6-100, 6-200, and 6-400; and
- (2) cows or cattle maintained on properties of 20 contiguous acres or more, owned by the same person or entity and zoned LDR-2, where the property is used for agricultural purposes and the amount of cows or cattle maintained is no greater than 30.

6-502 Definitions. For purposes of this Chapter, the following definitions shall apply:

- (1) Domestic animals are defined as non-poisonous snakes or snakes not prohibited by this Chapter, birds kept indoors, non-poisonous spiders, turtles, lizards, hamsters, chinchillas, mice, rabbits, gerbils, white rats, guinea pigs, or similar small animals capable of being maintained continuously in cages and indoors.
- (2) Non-domestic animals are defined as all other animals such as cows, sheep, pigs, potbellied pigs, bees, goats, swine, llamas, mules, horses or other hoofed animal, chickens, ducks, or other agricultural animals or domestic fowl and any animal, reptile or fowl, which is not naturally tame or gentle but is of a wild nature or disposition or which, because of its vicious nature or other characteristics, would constitute a danger to human life or property including:
 - (a) any animal or species prohibited by Minnesota or federal law;
 - (b) any skunk, raccoon, badger, weasel, wild ferret or fox, whether captured in the wild, domestically raised, de-scented or not de-scented, vaccinated against rabies or not vaccinated against rabies;
 - (c) any cats of the family Felidae, including lions, tigers, jaguars, leopards, cougars.

cheetahs, ocelots and servals, but not including commonly accepted domesticated house cats or cats recognized as a domestic breed, registered as a domestic breed, and shown as a domestic breed by a national or international multibreed cat registry association;

(d) any members of the family Canidae, such as wolves, foxes, coyotes, dingos, jackals but not including domesticated dogs;

(e) any crossbreeds such as crossbreeds between dogs and coyotes or dogs and wolves, but does not include crossbreeds between domesticated animals;

(f) any snake, that is a member of the pit viper or Blodae family, including but not limited to copperheads, water moccasins, rattlesnakes, fer-de-lances, bushmasters, asps, cobras, mamba, kraits, coral snakes, sea snakes, South American anacondas, Asian reticulated pythons, boa constrictors, tree boas and sand boas;

(g) any other snake or reptile which by their size, vicious nature, or other characteristic is dangerous to human beings;

(h) any poisonous spiders;

(i) any apes, gorillas, monkeys or other primates;

(j) any other animals which are not listed explicitly but which can be easily defined as a non-domesticated animal including bears and wolverines.

6-503 Keeping of Non-Domestic Animals.

(1) It shall be unlawful to keep, maintain, harbor, or feed any non-domestic animal within the City except where permitted elsewhere in this Chapter.

(2)) Songbird Exception. The feeding of songbirds is permitted under the following conditions:

(a) Feeding occurs from a bird feeder that is designed to prevent other wildlife, including squirrels, or waterfowl from eating from the bird feeder, and

(b) The bird feeder does not become an attractive nuisance to other wildlife or waterfowl, and

(c) Songbird feeding does not attract songbirds in such numbers that they become a nuisance or that they damage property, and

(d) The storage of songbird feed must be done in a sealed container and in a manner that rodents are not attracted to the feed, and

(e) Songbird feeding occurs on private property owned or controlled by the person responsible for the bird feeder.

6-504 Impounding of Non-Domestic Animals. Any non-domestic animal kept in violation of this Chapter may be impounded by the Animal Control Officer and after being so impounded for five (5) days or more without being redeemed, may be destroyed or otherwise humanely disposed of. Any person reclaiming any such impounded animal shall pay the costs of impounding and keeping the same. At the time of impounding, the Animal Control Officer shall notify the owner, if known, by telephone or personal contact and by written notice to his or her last known address. If the owner is unknown, written notice containing a description of the animal shall be posted at the animal shelter of impoundment and at City Hall. The notice shall advise the owner that he or she has five regular business days to claim and remove the animal from the City. Regular business day means any day during which the animal shelter is open to the public not less than four consecutive hours between the hours of 8:00 a.m. and 7:00 p.m.

6-505 Permitted Use. Use of horses and any accessory stabling of such shall be permitted in public parks on designated bridle paths only.

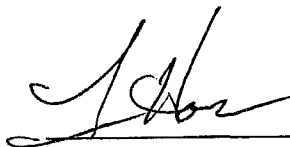
6-506 Permits. The City Council may grant permits for the keeping of non-domestic animals for use in connection with an exhibition or show only, or by persons keeping animals for a public zoo as volunteers, docents, or otherwise, for a maximum of 30 days provided that the Council finds that such animals are not likely to be dangerous, that they will be kept in safe and sanitary surroundings, that they will not be maintained in an inhumane manner or be subjected to any inhumane treatment, and that their presence on the premises will not be a source of nuisance or annoyance to the occupants of adjacent property. In granting such permit, the Council may impose limitations on the permit to ensure that such animals will be kept under such conditions. It will be unlawful for the permit holder to keep such animals in violation of the limitations imposed by the City Council. Any such permit shall be subject to immediate suspension by the Animal Control Officer if the officer determines that the animals are being kept in a manner which violates the terms of the permit. Such suspension shall remain in effect until the matter is heard before the City Council not less than 10 days nor more than 20 days after the suspension. At such meeting the City Council may revoke such permit or may reinstate the same subject to such limitations as the Council shall deem necessary. Applications for permits shall be in a form provided by the City Clerk.

6-507 Penalty. Any person convicted of a violation of any provision of this Chapter will be guilty of a misdemeanor.

6-508 Violation. Each day's violation of the provisions of this Chapter shall constitute a separate offense and shall be punishable as such hereunder.


Introduced this 20th day of July, 2010.

Adopted this 21 day of September, 2010.



Tim Howe, Mayor

ATTEST:



Joan A. Anderson, City Clerk

6-500-1

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 6-500

NON-DOMESTIC ANIMALS

6-501 Application. This Chapter shall apply to all animals both domestic and nondomestic, except:

- (1) dogs and cats which are regulated by City Code Chapter 6-100, 6-200, and 6-400; and
- (2) cows or cattle maintained on properties of 20 contiguous acres or more, owned by the same person or entity and zoned LDR-2, where the property is used for agricultural purposes and the amount of cows or cattle maintained is no greater than 30.

6-502 Definitions. For purposes of this Chapter, the following definitions shall apply:

(1) Domestic animals are defined as non-venomous snakes or snakes not prohibited by this Chapter, birds kept indoors, tarantula spiders of the family Theraphosidae, harmless invertebrates, turtles, lizards, hamsters, chinchillas, mice, rabbits, gerbils, white rats, guinea pigs, or similar small animals capable of being maintained continuously in cages and indoors.

(2) Non-domestic animals are defined as all other animals such as cows, sheep, pigs, potbellied pigs, bees, goats, swine, llamas, mules, horses or other hoofed animal, chickens, ducks, or other agricultural animals or domestic fowl and any animal, reptile or fowl, which is not naturally tame or gentle but is of a wild nature or disposition or which, because of its vicious nature or other characteristics, could possibly constitute a danger to human life or property including:

(a) any animal or species prohibited by Minnesota or federal law;

(b) any skunk, raccoon, badger, weasel, wild ferret or fox, whether captured in the wild, domestically raised, de-scented or not de-scented, vaccinated against rabies or not vaccinated against rabies;

(c) any cats of the family Felidae, including lions, tigers, jaguars, leopards, cougars, cheetahs, ocelots and servals, but not including commonly accepted domesticated house cats or cats recognized as a domestic breed, registered as a domestic breed, and shown as a domestic breed by a national or international multibreed cat registry association;

(d) any members of the family Canidae, such as wolves, foxes, coyotes, dingos, jackals but not including domesticated dogs;

(e) any crossbreeds such as crossbreeds between dogs and coyotes or dogs and wolves, but does not include crossbreeds between domesticated animals;

(f) any venomous snake, including but not limited to members of the Elapidae family (cobra, mamba, krait, coral snake, etc.), the Viperidae family (asp, adders, old world vipers, etc.), the Crotalidae family (rattlesnake, copperhead, bushmaster, other pit vipers, etc.) or the Hydrophiidae family (sea snakes, sea kraits, etc.) and also the following three snakes of the Colubridae family: the African twig snake (*Thelotornis kirtlandi*), the boomslang snake (*Dispholidus typus*), and the Asian tiger snake (*Rhabdophis tigrinus*);

(g) any monitor lizards of the Varanidae family that as adults will exceed six feet in total length, including but not limited to the Asian water monitor (*V. salvator*), Nile monitor (*V. niloticus*), white throat monitor (*V. albigularis*), perentie (*V. giganteus*), crocodile monitor (*V. salvadorii*), and Komodo dragon (*V. komodoensis*);

(h) any crocodilian, including but not limited to alligators, crocodiles, and caimans;

actual

9-21-2010

changes.

(additions are gray)

(i) any highly venomous spiders, including but not limited to black widow, brown recluse, or Sidney funnel web spider, etc;



(j) any apes, gorillas, monkeys or other primates;

(k) any other animals which are not listed explicitly but which can be easily defined as a non-domesticated animal including bears and wolverines.

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 6-500

NON-DOMESTIC ANIMALS

Effective
2-28-84
to
9-21-2010

6-501 Application. This Chapter shall apply to all animals both domestic and non-domestic, except dogs and cats which are regulated by City Code Chapter 6-100, 6-200, and 6-400; and horses and mules which are regulated by City Code Chapter 6-300.

6-502 Definitions. For purposes of this Chapter, the following definitions shall apply:

(1) Domestic animals means any living creature generally referred to as domestic pets and which are maintained within the residence and within a cage, including, but not limited to, birds, hamsters, chinchillas, lizards, snakes, etc.

(2) Non-domestic animals means all other living creatures.

6-503 Confinement of Domestic Animals. Domestic animals shall not be permitted to move at large off the owner's premises. Any domestic animal found in violation of this Section may be impounded by the Animal Control Officer and after being so impounded for five (5) days or more without being redeemed, may be destroyed or otherwise humanely disposed of. Any persons reclaiming any such impounded animal shall pay the costs of impounding and keeping the same. At the time of impounding, the Animal Control Officer shall notify the owner, if known, by telephone or personal contact and by written notice to his or her last known address. If the owner is unknown, written notice containing a description of the animal shall be posted at the pound and at City Hall. The notice shall advise the owner that he or she has five (5) regular business days to claim the animal. "Regular business day" means any day during which the pound is open to the public not less than four (4) consecutive hours between the hours of 8:00 a.m. and 7:00 p.m.

6-504 Nuisance. Except as provided in Sections 6-509 and 6-510 the keeping, maintaining, or harboring of one (1) or more non-domestic animals on any premises of less than five (5) acres is hereby declared to be a nuisance.

6-505 Keeping of Non-domestic Animals. Non-domestic animals may be kept, maintained, or harbored on premises five (5) acres or larger in size. Such animals shall be contained within the property by adequate fencing or other type of enclosure. No animal shall be contained upon such property within a distance of 350 feet of any residential structure, except the residence of the owner or keeper of the animal. The premises shall be maintained in a clean and sanitary manner, devoid of rodents and vermin and free from objectionable odors. No waste material from such animal shall be deposited or left upon any public property, nor private property not owned by the owner or keeper of the animal, nor within 350 feet of any residential structure unless such waste is immediately covered with at least four (4) inches of dirt.

6-506 Non-domestic Animals at Large. No person who owns, keeps, maintains, or harbors a non-domestic animal shall permit the same to leave the enclosure unless accompanied by and under the control of the owner or keeper. Any animal shall be deemed to be at large when it is outside of its enclosure and not accompanied by the owner, keeper, or their agent, except any non-domestic

animal trained to return to its owner's premises shall be considered under its owner's control when released away from the owner's premises and flying thereto in the most direct route.

6-507 Impounding of Non-domestic Animals. Any non-domestic animal kept in violation of this Chapter may be impounded by the Animal Control Officer and after being so impounded for five (5) days or more without being redeemed, may be destroyed or otherwise humanely disposed of. Any person reclaiming any such impounded animal shall pay the costs of impounding and keeping the same. At the time of impounding, the Animal Control Officer shall notify the owner, if known, by telephone or personal contact and by written notice to his or her last known address. If the owner is unknown, written notice containing a description of the animal shall be posted at the pound and at City Hall. The notice shall advise the owner that he or she has five (5) regular business days to claim the animal. Regular business day means any day during which the pound is open to the public not less than four (4) consecutive hours between the hours of 8:00 a.m. and 7:00 p.m.

6-508 Violation. Each day's violation of the provisions of this Chapter shall constitute a separate offense and shall be punishable as such hereunder.

6-509 Permits. The City Council may grant permits for the keeping of non-domestic animals for use in connection with an educational display thereof provided that the Council finds that such animals are not likely to be dangerous, that they will be kept in safe and sanitary surroundings, that they will not be maintained in an inhumane manner or be subjected to any inhumane treatment, and that their presence on the premises will not be a source of nuisance or annoyance to the occupants of adjacent property. In granting such permit, the Council may impose limitations on the permit to ensure that such animals will be kept under such conditions. It will be unlawful for any person having such a permit to keep such animals without maintaining such conditions or without abiding by the limitations imposed by the City Council. Any such permit shall be subject to immediate suspension by the Chief Building Official if he determines that the animals are being kept in a manner which violates the terms of the permit. Such suspension shall remain in effect until the next subsequent meeting of the City Council. At such meeting the City Council may revoke such permit or may reinstate the same subject to such limitations as the Council shall deem necessary.

Applications for permits shall be in the form provided by the City Clerk. Each permit shall expire on December 31 of the year in which issued.

6-510 License Required for Keeping of Pigeons. No person shall keep four (4) or more pigeons on any premises in the City of less than five (5) acres in size without first obtaining a license as provided in this Section and no person shall keep or harbor pigeons except in compliance with this Section.

(1) As used in this Section the term "pigeon" includes any and all varieties of pigeons. The term "loft" includes any and all quarters in which pigeons are housed.

(2) Application for a license to keep pigeons shall be made to the City Clerk on such forms as the City Clerk may provide. The application shall be investigated by the administrative staff of the City to determine compliance with the ordinance of the City and shall then be referred to the City Council which shall have the discretion to grant or deny the license. The Council shall conduct a public hearing if required by City Code Chapter 6-600. In making such determination, the Council shall take into consideration, among other things, the following: the adequacy of the housing for the pigeons; the methods to be used for sanitation and to maintain quiet; and, with particularity, any

violations during the previous license period, if applicable. The Council may also impose such conditions as it shall deem necessary and appropriate to carry out the intent of this Chapter.

(3) In addition to such information required by the City Clerk the application shall also include the following information:

(a) A site plan showing the location and size of the premises and the location, size and type of all structures for the housing of the pigeons.

(b) The maximum number of pigeons to be kept on the premises at any one time.

(c) An agreement by the applicant that the premises may be inspected by the City at all reasonable times so as to assure compliance with the following:

i. All premises on which pigeons are kept or maintained shall be kept reasonably clean from filth, garbage, and any substances which attract rodents. The loft and its surroundings must be cleaned at least weekly.

ii. The loft must be constructed and maintained so as to be rodent-proof.

iii. All pigeons shall be fed within the confines of the loft on the premises on which the pigeons are housed. The pigeons shall be confined to the loft except when they are released for exercise, performance, training, or to return from areas outside the corporate limits of the City of Coon Rapids for the purpose of engaging in a race or returning from training flights.

iv. All grains and foods stored for the use of the pigeons on a licensed premises shall be kept in rodent free containers.

v. Pigeons shall not be kept in such a manner as to constitute a nuisance to the occupants of adjacent property.

vi. All conditions imposed by the Council shall be complied with.

(4) Revocation. If the licensee fails to comply with the statements made in the application or with any reasonable conditions imposed by the Council or violates any other provisions of this Chapter, the licensee shall be notified by mail and given ten (10) days to remedy any defects or defaults. If such conditions be not remedied in said ten (10) days, the Council may revoke the license in accordance with the provisions of Section 5-108.

(5) License Period and Fee. Each license issued pursuant to this Section shall expire on December 31 of the year in which issued. The annual license fee shall be \$46.00 per year which fee may be prorated in accordance with the provisions of City Code Section 5-105; provided, however, that the license fee for applicants 17 years of age or younger, or 65 years of age or older, shall be 50 percent of the fee herein provided. [Revised 09/24/91, Ordinance 1386] [Revised 11/9/93, Ordinance 1472][Revised 12/6/94, Ordinance 1515][Revised 11/21/95, Ordinance 1549][Revised 11/19/96, Ordinance 1584][Revised 11/18/97, Ordinance 1621][Revised 11/17/98, Ordinance 1652][Revised 11/16/99, Ordinance 1681][Revised 11/21/00, Ordinance 1714][Revised 11/20/01, Ordinance 1739] [Revised 11/19/02, Ordinance 1789][Revised 12/2/03, Ordinance 1824]

6-511 Abatement of Nonconforming Uses. Any person maintaining or harboring non-domestic animals contrary to the provisions of this Chapter on its effective date, may continue such nonconforming use; provided, however, that the use shall be discontinued within ninety (90) days after the effective date of this Chapter.

6-512 Penalty. Any person convicted of a violation of any provision of this Chapter will be guilty of a misdemeanor.

2-28-84
ordinance
change.

ORDINANCE NO. 918

AN ORDINANCE PROHIBITING THE HARBORING OF NON-DOMESTIC
ANIMALS ON PREMISES OF LESS THAN FIVE ACRES AND IMPOSING
A PENALTY THEREFOR AND THEREBY AMENDING REVISED CITY
CODE - 1982, SECTIONS 6-502 (1); 6-504; 6-505, 6-509 AND 6-511 AND
AND ADDING SECTION 6-512

The City of Coon Rapids does ordain:

Section 1. Revised City Code - 1982, Section 6-502 (1) is amended to read as follows: (Additions underlined, deletions in brackets).

(1) Domestic animals means any living creature generally referred to as domestic pets and which are [capable of being] maintained within the residence and within a cage, including, but not limited to, birds, hamsters, chinchillas, lizards, snakes, etc.

Section 2. Revised City Code - 1982, Section 6-504 is amended to read as follows: (Additions underlined, deletions in brackets).

6-504 Nuisance. Except as provided in Sections 6-509 and 6-510, the keeping, maintaining, or harboring of [four (4)] one (1) or more nondomestic animals on any premises of less than five (5) acres is hereby declared to be a nuisance. [Any person convicted of violation of this Section shall be guilty of a misdemeanor.]

Section 3. Revised City Code - 1982, Section 6-505 is amended to read as follows: (Additions underlined, deletions in brackets).

6-505 Keeping of Nondomestic Animals. [Four (4) or more n]Nondomestic animals may be kept, maintained, or harbored on premises five (5) acres or larger in size. Such animals shall be contained within the property by adequate fencing or other type of enclosure. No animal shall be contained upon such property within a distance of 350 feet of any residential structure, except the residence of the owner or keeper of the animal. The premises shall be maintained in a clean and sanitary manner, devoid of rodents and vermin and free from objectionable odors. No waste material from such animal shall be deposited or left upon any public property, nor private property not owned by the owner or keeper of the animal, nor within 350 feet of any residential structure unless such waste is immediately covered with at least four (4) inches of dirt.

Section 4. Revised City Code - 1982, Section 6-509 is amended to read as follows: (Deletions in brackets, additions underlined).

6-509 [Temporary] Permits. The City Council may grant [temporary] permits [for a period not to exceed six (6) months] for the keeping of [four (4) or more] nondomestic animals for use in connection with an educational [exhibition or seasonal] display thereof provided that the Council finds that such animals are not likely to be dangerous, that they will be kept in safe and sanitary surroundings, that they will not be maintained in an inhumane manner or be subjected to any inhumane treatment, and that their presence on the premises will not be a source of nuisance or annoyance to the occupants of adjacent property. In granting such permit, the Council may impose limitations on the permit to ensure that such animals will be kept under such conditions. It will be unlawful for any person having such a permit to keep such animals without maintaining such conditions or without abiding by the limitations imposed by the City Council. Any such permit shall be subject to immediate suspension by the Chief Building Official if he determines that the animals are being kept in a manner which violates the terms of the permit. [s]Such suspension shall remain in effect until the next subsequent meeting of the City Council. At such meeting the City Council may revoke such permit or may reinstate the same subject to such limitations as the Council shall deem necessary. Applications for permits shall be in form provided by the City Clerk. Each permit shall expire on December 31 of the year in which issued.

Section 5. Revised City Code - 1982, Section 6-511 is amended to read as follows: (Additions underlined, deletions in brackets).


6-511 Abatement of Nonconforming Uses. Any person maintaining or harboring nondomestic animals contrary to the provisions of this Chapter on its effective date, may continue such nonconforming use; provided, however, that the use shall be discontinued within [one (1) year] ninety (90) days after the effective date of this Chapter.

Section 6. Revised City Code - 1982, Chapter 6 is hereby amended by adding thereto the following:

6-512 Penalty. Any person convicted of a violation of any provision of this Chapter shall be guilty of a misdemeanor.

Introduced and read in full on first reading the 24th day of January, 1984.

Adopted on second reading the 28th day of February, 1984.


Robert B. Lewis, Mayor

ATTEST:


Betty Bell, City Clerk

Up to
2-28-84

CHAPTER 6-500

NONDOMESTIC ANIMALS

6-501 Application. This Chapter shall apply to all animals both domestic and nondomestic, except dogs and cats which are regulated by City Code Chapter 6-100, 6-200, and 6-400; and horses and mules which are regulated by City Code Chapter 6-300.

6-502 Definitions. For purposes of this Chapter, the following definitions shall apply:

(1) Domestic animals means any living creature generally referred to as domestic pets and which are capable of being maintained within the residence and within a cage, including, but not limited to, birds, hamsters, chinchillas, lizards, snakes, etc.

(2) Nondomestic animals means all other living creatures.

6-503 Confinement of Domestic Animals. Domestic animals shall not be permitted to move at large off the owner's premises. Any domestic animal found in violation of this Section may be impounded by the Animal Control Officer and after being so impounded for five (5) days or more without being redeemed, may be destroyed or otherwise humanely disposed of. Any persons reclaiming any such impounded animal shall pay the costs of impounding and keeping the same. At the time of impounding, the Animal Control Officer shall notify the owner, if known, by telephone or personal contact and by written notice to his or her last known address. If the owner is unknown, written notice containing a description of the animal shall be posted at the pound and at City Hall. The notice shall advise the owner that he or she has five (5) regular business days to claim the animal. "Regular business day" means any day during which the pound is open to the public not less than four (4) consecutive hours between the hours of 8:00 a.m. and 7:00 p.m.

6-504 Nuisance. Except as provided in Sections 6-509 and 6-510, the keeping, maintaining, or harboring of four (4) or more nondomestic animals on any premises of less than five (5) acres is hereby declared to be a nuisance. Any person convicted of violation of this Section shall be guilty of a misdemeanor.

6-505 Keeping of Nondomestic Animals. Four (4) or more nondomestic animals may be kept, maintained, or harbored on premises five (5) acres or larger in size. Such animals shall be contained within the property by adequate fencing or other type of enclosure. No animal shall be contained upon such property within a distance of 350 feet of any residential structure, except the residence of the owner or keeper of the animal. The premises shall be maintained in a clean and sanitary manner, devoid of rodents and vermin and free from objectionable odors. No waste material from such animal shall be deposited or left upon any public property, nor private property not owned by the owner or keeper of the animal, nor within 350 feet of any residential structure unless such waste is immediately covered with at least four (4) inches of dirt.

6-506 Nondomestic Animals at Large. No person who owns, keeps, maintains, or harbors a nondomestic animal shall permit the same to leave the enclosure unless accompanied by and under the control of the owner or keeper. Any animal shall be deemed to be at large when it is outside of its enclosure and not accompanied by the owner, keeper, or their agent, except any nondomestic animal trained to return to its owner's premises shall be considered under its owner's control when released away from the owner's premises and flying thereto in the most direct route.

6-507 Impounding of Nondomestic Animals. Any nondomestic animal kept in violation of this Chapter may be impounded by the Animal Control Officer and after being so impounded for five (5) days or more without being redeemed, may be destroyed or otherwise humanely disposed of. Any person reclaiming any such impounded animal shall pay the costs of impounding and keeping the same. At the time of impounding, the Animal Control Officer shall notify the owner, if known, by telephone or personal contact and by written notice to his or her last known address. If the owner is unknown, written notice containing a description of the animal shall be posted at the pound and at City Hall. The notice shall advise the owner that he or she has five (5) regular business days to claim the animal. Regular business day means any day during which the pound is open to the public not less than four (4) consecutive hours between the hours of 8:00 a.m. and 7:00 p.m.

6-508 Violation. Each day's violation of the provisions of this Chapter shall constitute a separate offense and shall be punishable as such hereunder.

6-509 Temporary Permits. The City Council may grant temporary permits for a period not to exceed six (6) months for the keeping of four (4) or more nondomestic animals for use in connection with an exhibition or seasonal display thereof provided that the Council finds that such animals are not likely to be dangerous, that they will be kept in safe and sanitary surroundings, that they will not be maintained in an inhumane manner or be subjected to any inhumane treatment, and that their presence on the premises will not be a source of nuisance or annoyance to the occupants of adjacent property. In granting such permit, the Council may impose limitations on the permit to ensure that such animals will be kept under such conditions. It will be unlawful for any person having such a permit to keep such animals without maintaining such conditions or without abiding by the limitations imposed by the City Council. Any such permit shall be subject to immediate suspension by the Chief Building Official if he determines that such suspension shall remain in effect until the next subsequent meeting of the City Council. At such meeting the City Council may revoke such permit or may reinstate the same subject to such limitations as the Council shall deem necessary.

6-510 License Required For Keeping of Pigeons. No person shall keep four (4) or more pigeons on any premises in the City of less than five (5) acres in size without first obtaining a license as provided in this Section and no person shall keep or harbor pigeons except in compliance with this Section.

(1) As used in this Section the term "pigeon" includes any and all varieties of pigeons. The term "loft" includes any and all quarters in which pigeons are housed.

(2) Application for a license to keep pigeons shall be made to the City Clerk on such forms as the City Clerk may provide. The application shall be investigated by the administrative staff of the City to determine compliance with the ordinance of the City and shall then be referred to the City Council which shall have the discretion to grant or deny the license. The Council shall conduct a public hearing if required by City Code Chapter 6-600. In making such determination, the Council shall take into consideration, among other things, the following: the adequacy of the housing for the pigeons; the methods to be used for sanitation and to maintain quiet; and, with particularity, any violations during the previous license period, if applicable. The Council may also impose such conditions as it shall deem necessary and appropriate to carry out the intent of this Chapter.

(3) In addition to such information required by the City Clerk the application shall also include the following information:

(a) A site plan showing the location and size of the premises and the location, size and type of all structures for the housing of the pigeons.

(b) The maximum number of pigeons to be kept on the premises at any one time.

(c) An agreement by the applicant that the premises may be inspected by the City at all reasonable times so as to assure compliance with the following:

i. All premises on which pigeons are kept or maintained shall be kept reasonably clean from filth, garbage, and any substances which attract rodents. The loft and its surroundings must be cleaned at least weekly.

ii. The loft must be constructed and maintained so as to be rodent-proof.

iii. All pigeons shall be fed within the confines of the loft on the premises on which the pigeons are housed. The pigeons shall be confined to the loft except when they are released for exercise, performance, training, or to return from areas outside the corporate limits of the City of Coon Rapids for the purpose of engaging in a race or returning from training flights.

iv. All grains and foods stored for the use of the pigeons on a licensed premises shall be kept in rodent free containers.

v. Pigeons shall not be kept in such a manner as to constitute a nuisance to the occupants of adjacent property.

vi. All conditions imposed by the Council shall be complied with.

(4) Revocation. If the licensee fails to comply with the statements made in the application or with any reasonable conditions imposed by the Council or violates any other provisions of this Chapter, the licensee shall be notified by mail and given ten (10) days to

remedy any defects or defaults. If such conditions be not remedied in said ten (10) days, the Council may revoke the license in accordance with the provisions of Section 5-108.

(5) License Period and Fee. Each license issued pursuant to this Section shall expire on December 31 of the year in which issued. The annual license fee shall be \$20 per year which fee may be prorated in accordance with the provisions of City Code Section 5-105; provided, however, that the license fee for applicants 17 years of age or younger, or 65 years of age or older, shall be 50 percent of the fee herein provided.

6-511 Abatement of Nonconforming Uses. Any person maintaining or harboring nondomestic animals contrary to the provisions of this Chapter on its effective date, may continue such nonconforming use; provided, however, that the use shall be discontinued within one (1) year after the effective date of this Chapter.

11155 Robinson Drive
Coon Rapids MN 55433
Tel 763-755-2880
Fax 763-767-6491
www.coonrapidsmn.gov



COON RAPIDS Minnesota

June 4, 2012

SCOTT C NELLIS
10320 GROUSE ST NW
COON RAPIDS, MN 55433

Address: 10320 Grouse Street
COON RAPIDS, MN

PIN #: 223124410111

This is an Administrative Citation issued under Coon Rapids City Code Chapter 2-1100. If you correct the conditions leading to the Citation before the Compliance Date the penalty will be waived. If you appeal the Citation before the Compliance Date listed, the penalty will be stayed until the appeal is heard. If a second or subsequent Citation is issued within 180 days of any same or similar Citation the penalty will double. If you correct the conditions leading to the subsequent Citation prior to the Compliance Date, one half of the civil penalty will be waived. In addition to any civil penalties, you may also be subject to Excessive Consumption of Services fees as allowed by City Code Section 12-317.

Violations

On 10/26/2011 at 1:40PM the following violation(s) of Coon Rapids City Code were found:

City Code 6-503(1) Keeping of Non-Domestic Animals – It shall be unlawful to keep, maintain, harbor, or feed any non-domestic animal within the City except where permitted elsewhere in this Chapter.

City Code 6-502(2) Non-domestic animals are defined as all other animals such as cows, sheep, pigs, potbellied pigs, bees, goats, swine, llamas, mules, horses or other hoofed animal, chickens, ducks, or other agricultural animals or domestic fowl and any animal, reptile or fowl, which is not naturally tame or gentle but is of a wild nature or disposition or which, because of its vicious nature or other characteristics, would constitute a danger to human life or property including:

6-502(f) any snake, that is a member of the pit viper or Boidae family, including but not limited to copperheads, water moccasins, rattlesnakes, fer-de-lances, bushmasters, asps, cobras, mamba, kraits, coral snakes, sea snakes, South American anacondas, Asian reticulated pythons, boa constrictors, tree boas and sand boas;

6-502(g) any other snake or reptile which by their size, vicious nature, or other characteristic is dangerous to human beings;

Compliance Action

The removal of all non-domestic animals prohibited by City Code 6-502(2).

Compliance Date

June 15, 2012

Penalty if Not Compliant by Compliance Date

\$300.00

You have the right to appeal if you feel the Inspector has not interpreted the City Code correctly. Please refer to the attached/enclosed Administrative Citation Program brochure for more information on how to appeal this Citation. Also refer to this brochure for instructions on applying for an extension of the Compliance Date. You can view the full City Code online at www.coonrapidsmn.gov/citycode or you can obtain the City Code Section(s) at Coon Rapids City Hall at 11155 Robinson Dr. NW, Coon Rapids, MN 55433.

Please note that if your property is not brought into compliance by the Compliance Date listed above, the City may enter your property to abate the violation (correct the conditions leading to the violation). If the city abates the violation, the penalty is immediately due. All costs of the abatement, along with any unpaid penalty, will be charged to your property taxes in a form of a Special Assessment.



Marc Nevinski
Community Development Director
763-767-6451

11155 Robinson Drive
Coon Rapids MN 55433
Tel 763-755-2880
Fax 763-767-6491
www.coonrapidsmn.gov



COON RAPIDS Minnesota

June 4, 2012

SCOTT C NELLIS
10320 GROUSE ST NW
COON RAPIDS, MN 55433

Address: 10320 Grouse Street
COON RAPIDS, MN

PIN #: 223124410111

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Violations

On 10/26/2011 at 1:40PM the following violation(s) of Coon Rapids City Code were found:

City Code 11-703 via 11-603(5) Home Occupations

(5) Home occupations meeting the following criteria:

- (a) The home occupation is clearly incidental and secondary to the residential use of the property and does not change the character thereof.
- (b) Nothing is discernable to surrounding properties indicating that a home occupation is being conducted except for a sign as permitted by Chapter 11-2100, a garden, or one motor vehicle (otherwise permitted by 11-1800) whose nature or signage indicates it is used in the business. There is no outdoor storage or display of equipment or materials used in the home occupation.
- (c) No internal or external alterations are made that are not customarily found in dwellings.
- (d) If the home occupation is carried on in the garage, the minimum amount of required garage space is maintained as garage space.
- (e) No parking spaces are improved to provide for the home occupation. Any vehicle whose nature or signage indicates it is used in the business is parked in the driveway or garage.
- (f) No one who does not reside on the premises works on the premises. No one is transported from the premises to a job site who does not reside on the premises.
- (g) The home occupation is serviced by delivery vehicles no larger than 26,000 pounds gross vehicle weight.
- (h) Permitted home occupations are generally those that do not bring people or customers to the Residence and that are not or prohibited home occupations. This would include, but not be limited to, the following: a craft business that markets goods at craft fairs, off-premises shops, parties, etc., so that no customers visit the residence; a typing, accounting, or mailing service where all work is picked up and delivered to the customer; the office for a traveling salesperson or a cleaning service; a retail business where all orders are received by mail or telephone and are delivered to the customers' premises; and a sewing business that does not involve customer visits.

Page 1 of 2

Compliance Action

Cease and dismantle use of the property that is illegal, and otherwise above and beyond what is clearly incidental and secondary to the residential use of the property. This would include, but is not necessarily limited to, the following:

1. Removal of all illegal animals from the residence.
2. Reduction of the number of total of animals from the residence to make any home occupation occurring at the residence to be clearly incidental and secondary to the residential use of the property.
3. Removal of cages and other articles associate with the home occupation so as not to interfere with normal use of the property for residential purposes.
4. Reduction of odors within the residence to a level that is normally found in a residential property.
5. Reduction of waste output from any home occupation to levels that could be accommodated by normal residential waste service.

Compliance Date

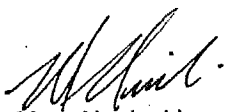
June 15, 2012

Penalty if Not Compliant by Compliance Date

\$300.00

You have the right to appeal if you feel the Inspector has not interpreted the City Code correctly. Please refer to the attached/enclosed Administrative Citation Program brochure for more information on how to appeal this Citation. Also refer to this brochure for instructions on applying for an extension of the Compliance Date. You can view the full City Code online at www.coonrapidsmn.gov/citycode or you can obtain the City Code Section(s) at Coon Rapids City Hall at 11155 Robinson Dr NW, Coon Rapids, MN 55433.

Please note that if your property is not brought into compliance by the Compliance Date listed above, the City may enter your property to abate the violation (correct the conditions leading to the violation). If the city abates the violation, the penalty is immediately due. All costs of the abatement, along with any unpaid penalty, will be charged to your property taxes in a form of a Special Assessment.



Marc Nevinski
Community Development Director
763-767-6451

This document is designed to help you understand the Administrative Citation (the "Citation") process, provide contact information, and tell you how to appeal the Citation if you decide to do so.

What is the Administrative Citation Program?

The Administrative Citation Program (ADCAP) was authorized by the Coon Rapids City Council to encourage property owners to address violations of City Code on their properties. An Administrative Citation imposes a penalty for violating a City Code but allows a property owner to correct the violation without paying the penalty if corrected by the Compliance Date. Subsequent Citations may result in the imposition of penalties (see the section on Multiple Citations). The Citation is not a criminal citation and you should not go to the courthouse to contest it. ADCAP is administered by the City of Coon Rapids Neighborhood Reinvestment Division.

How does it work?

- An inspection is made of the property in response to a concern from a citizen, Councilmember, or City staff.
- If violations exist, an Administrative Citation is issued. If the violations listed on the Citation are corrected before the Compliance Date noted on the Citation, the penalty or penalties listed on the Citation are waived unless this is a second or subsequent Citation within a 180-day period. Immediately following the Compliance Date, a City Official will re-inspect the property to verify that corrections have been made.
- If the violations are not corrected and an appeal is not filed, the penalty or penalties listed on the Citation must be paid.
- In addition, the City may hire a contractor to abate (remedy) the violation(s) listed on the Citation from the property. The cost of abatement is charged in addition to the penalty. These charges are assessed to the property taxes and collected in the same manner as a special assessment.

How do I extend the Compliance Date?

If you need more time beyond the Compliance Date to correct the violations, you may ask for an extension. To be granted an extension you must admit your property is in violation of City Code and submit a written plan stating the action you will take to achieve compliance. Upon determination by the City Official issuing the Citation that the plan is adequate to remedy the violation, an extension may be granted. A request for an extension must be submitted on or before the Compliance Date on the Citation.

How do I Appeal?

If you disagree with the City Official's findings and/or interpretation of the City Code, you may appeal the Citation or parts thereof. An appeal may only be executed by the owner of the property. The appeal must be filed on the Notice of Appeal form to the right and submitted to the Hearing Examiner at the Community Development Department in City Hall, 11155 Robinson Drive, Coon Rapids, MN 55433. The appeal must be delivered in person or by U.S. Mail and must be received on or before the Compliance Date. An appeal that arrives after 4:30 p.m. on the Compliance Date will not be accepted and the penalty or penalties will be charged. Once an appeal is received, penalties and compliance will be suspended until the appeal is heard by the Hearing Examiner.

If you are not satisfied with the Hearing Examiner's decision, you have the right to appeal to the City of Coon Rapids Board of Adjustment and Appeals. To appeal the Board's decision, you must file an appeal with the Minnesota State Court of Appeals.

Multiple citations within a 180-day period

If you receive a second or subsequent Administrative Citation within 180 days of a previous Citation, City Code Section 2-1103(3) states the subsequent Citation is subject to a civil penalty at least twice the previous amount. If the subsequent violation is remedied prior to its Compliance Date, one-half of the civil penalty will be waived. The second or subsequent Administrative Citation will result in a civil penalty being assessed to the property taxes.

NOTICE OF APPEAL

PLEASE PRINT
Fill out this form and submit it to City Hall on or before the Compliance Date if you wish to appeal Citation.

Administrative Citation Number: 45839-20632

Property Address: 10320 GROUND ST. NW

Person(s) Responsible for Violation:

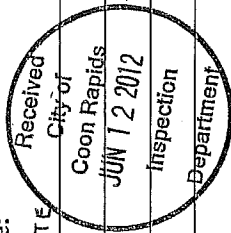
SCOTT NELLS

Responsible Party's Relationship to the Property
☒ Owner

☐ Other (specify): _____

I am appealing the Citation because:

SEE ATTACHED NOTE



Attach additional pages if needed.

☐ I hereby waive further right to appeal this Citation and ask for a time extension of _____ days. Attached is a written plan of the action I will take to achieve compliance within this extended time period.

I certify that I am the owner of the property and the information contained herein is correct to the best of my knowledge.

Signature: Scott Nells

Print Name: SCOTT NELLS

Phone Number: 763-757-9766 Date: 6-12-12

Mailing Address:

10320 GROUND ST. NW

COON RAPIDS, MN 55433

For ADCAP Staff only:

Notice rec'd date: 6-12-12 Initials MAN

If you have additional questions regarding the Administrative Citation program, contact the City Official on the Citation at the phone number provided.

Home Improvement Funding Available

Home Improvement funding is available for eligible improvements to your property. Select programs have no income limits. Low interest and deferred payment loan options are available to qualified borrowers. For more information, visit the City's home improvement loan web page at <http://www.coonrapidsmn.gov/housing/homeloans.htm> or call the home improvement loan program administrators:

HousingResource Center at 651-486-7401

Center for Energy and Environment at 612-335-5891

Abatement Notice

If you fail to bring the property into compliance or fail to appeal the Citation on or before the Compliance Date, the penalty will become due and owing and the City is authorized by City Code to enter onto your property and abate (remedy) the violations. The City may hire a contractor to abate the violation(s) noted on the Citation without further notice. The penalty or penalties, abatement costs, and an administrative assessment fee will then be assessed to your property and collected with property taxes.

Payments

To pay penalty and abatement costs make payment to:

City of Coon Rapids
Neighborhood Reinvestment Division
Attn: ADCAP
11155 Robinson Drive NW
Coon Rapids, MN 55433



Administrative Citation Program

Prepared by the Coon Rapids
Neighborhood Reinvestment Division
11155 Robinson Drive NW
Coon Rapids, MN 55433

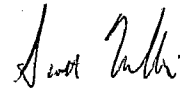
Appeal of citation # 45839-20632

I am appealing this citation on several grounds...

- I have been raising and breeding reptiles and snakes since 1996 and specifically various small harmless pythons and boas since at least 2004 and have well over \$50,000 invested in animals and equipment. To remove all "non-domestic" animals from my property would be a great financial hardship as I have NOWHERE to move them. Also, both the animals and I would suffer in health by any additional burdens of travel between any secondary location, assuming I could find AND afford the cost of such a location.
- I checked ALL of Coon Rapids city code several times prior to 2010 and EVERYTHING I have and do was completely legal then.
- City code 6-500 was changed without my knowledge in July-September of 2010 making the previously LEGAL species of snakes I'm keeping now illegal.
- The change in city code 6-500 WITHOUT an exclusionary clause to allow for existing conditions is a case of ex post facto law and is ILLEGAL by constitutional law.
- In discussion of the proposed change to city code 6-500 in the September 21, 2010 city council minutes, then city attorney Stoney Hiljus stated "An exception was included in 6-501(2) to ALLOW FOR AN EXISTING USE TO CONTINUE after the ordinance takes effect". What happened to that and how did it get changed to "cows on 20 acres or more"?
- I should be granted an exclusion for "an existing use" from city code 6-500 because I had obtained my boa and python snakes PRIOR to the change. There is precedent in state law for this.
- City code 6-502(2) does not apply here. Harmless boas and pythons have been captive raised and bred for over 45 years making them domesticated in every sense of the word.
- City code 6-502(f) includes all members of the Boidae family including "tree boas and sand boas". This is laughable as tree boas rarely exceed 6 feet and sand boas rarely exceed 2 feet and are NO THREAT TO HUMANS. There has NEVER, EVER been a serious injury or death attributed to a tree or sand boa...EVER!
- City code 6-502(g) is highly subjective and discriminatory. Singling out snakes by size alone is discriminatory. Why not ban ALL DOGS over 40 pounds? That would be the same type of argument. What "other characteristics" would be used to determine whether a particular snake is "dangerous to human beings"? They tried doing this with breeds of dogs and the courts disallowed it.

- PetCo and PetSmart of Coon Rapids have and still are selling ball pythons, common boas, and sand boas to the citizens of Coon Rapids. This makes city code 6-502(f) unenforceable and discriminatory. Both stores keep records of all live animal sales. Why hasn't the City shut them down or gone after the buyers?? This is pure discrimination and is illegal.
- Purposely putting ALL Boidae snakes in the "non-domestic animal" category, when prior to September 2010 and the last 50 years there was never any problem, is a case of pure discrimination based on public ignorance and irrational fear.

Scott Nellis



June 12, 2012

Scott Nellis (homeowner)
10320 Grouse Street NW
Coon Rapids, MN 55433



TO: CITY
MANAGER

A handwritten signature in black ink, appearing to read "Doug [unclear]".

Appeal of Notice of Determination of Hearing Examiner following 2-1106(1) Hearing

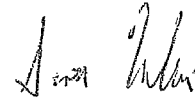
Re: citation # 45839-20633

I'm appealing this citation on several grounds...

- My home occupation is more hobby than business. Virtually ALL my sales take place outside the home at locations outside of Coon Rapids, MN and outside of the state of Minnesota.
- In my opinion, I DO meet the requirements of a home occupation in Coon Rapids. First and foremost, my home IS a residence and home with my hobby occupying one room off the foyer and part of my partially finished basement. It IS therefore "incidental and secondary" to the residence since it also takes up far less than 50% of the space in my house.
- Nothing about my hobby is discernible from the outside, the entry or upstairs for that matter. There is no signage anywhere, and no alterations were made to the structure of the house.
- NO customers come to my house. I do virtually ALL my sales by traveling to Reptile Expos in other states.
- Removal of "illegal" animals is being covered in an appeal to citation # 45839-20632.
- Reduction of animals at my residence has been ongoing, but is never the less, an issue that should have no bearing in this citation.
- Removal of cages from my property also has no bearing in this citation as it is NOT illegal to own equipment. They also do NOT interfere with normal residential use of my property.
- Any offensive odors have been dealt with and are no longer an issue.
- Waste output is currently being handled by normal and regular residential waste service. There are NO laws stating that I cannot have two waste containers instead of one.

Appeal of Notice of Determination of citation # 45839-20633

Scott Nellis

A handwritten signature in black ink, appearing to read "Scott Nellis", written in a cursive style.

October 5, 2012

11155 Robinson Drive
Coon Rapids MN 55433
Tel 763-755-2880
Fax 763-767-6491
www.coonrapidsmn.gov



COON RAPIDS

Minnesota

Notice of Determination of Hearing Examiner following 2-1106(1) Hearing

October 2, 2012

Scott Nellis
10320 Grouse Street
Coon Rapids, MN 55433

Re: 10320 Grouse Street, Coon Rapids, Minnesota
Citation Number – 45839-20633
Offense Date – October 26, 2012
Hearing Date – June 28, 2012

To Mr. Scott Nellis:

This written Notice of Determination is made pursuant to Coon Rapids City Code Section 2-1106(1). The undersigned hearing examiner is duly designated by the Coon Rapids City Manager to conduct an appeal under Chapter 2-1100. The examiner has the power to affirm, rescind, or modify the Citation, and must provide a written notice of the determination after hearing, by personal service or U.S. Mail.

Based on the evidence provided at the hearing, the undersigned issues the following Notice of Determination: *The Citation herein is affirmed in its entirety.*

The Compliance Date herein is hereby extended to ten (10) days from the date of this Notice of Determination.

You have the right to appeal this Notice of Determination. You must make your appeal in writing to the City Manager, Coon Rapids City Center, 11155 Robinson Drive NW, Coon Rapids, MN 55433, within ten (10) days of the date of this Notice of Determination. The appeal must minimally state the name and mailing address of, and be signed by, the person making the appeal, the relationship of the person to the property, and a brief statement why the Citation is in error. In case of property violations, only a person with an ownership interest in the property may bring an appeal. Please place your Citation number on any documents you send.

Upon receipt of an appeal conforming to City Code, the City Manager must place the matter before the City of Coon Rapids Board of Adjustment and Appeals at its next available hearing date, subject to the requirements of City Code Section 2-1106(3). You would be notified of the hearing date, and additional information, by mail to the address you provide in your appeal document.

Scott Nellis
Notice of Determination
Administrative Citation 45839-20633
October 2, 2012

If you choose not to appeal, you must remedy the above deficiency or deficiencies within the time period specified above. Uncorrected violations are subject to the original fine, plus costs of abatement, which amounts if not paid may be subject to penalty, and collected and/or levied against the property under Coon Rapids City Code Section 2-1107.

Please contact me if you have any questions.



Cheryl Bennett
Hearing Examiner
763-767-6422

Cc: Marc Nevinski, Coon Rapids Community Development Director

11155 Robinson Drive
Coon Rapids MN 55433
Tel 763-755-2880
Fax 763-767-6491
www.coonrapidsmn.gov



COON RAPIDS Minnesota

Notice of Determination of Hearing Examiner following 2-1106(1) Hearing

October 2, 2012

Scott Nellis
10320 Grouse Street
Coon Rapids, MN 55433

Re: 10320 Grouse Street, Coon Rapids, Minnesota
Citation Number – 45839-20633
Offense Date – October 26, 2012
Hearing Date – June 28, 2012

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Scott Nellis
Notice of Determination
Administrative Citation 45839-20633
October 2, 2012

If you choose not to appeal, you must remedy the above deficiency or deficiencies within the time period specified above. Uncorrected violations are subject to the original fine, plus costs of abatement, which amounts if not paid may be subject to penalty, and collected and/or levied against the property under Coon Rapids City Code Section 2-1107.

Please contact me if you have any questions.


Cheryl Bennett
Hearing Examiner
763-767-6422

Cc: Marc Nevinski, Coon Rapids Community Development Director

11155 Robinson Drive
Coon Rapids MN 55433
Tel 763-755-2880
Fax 763-767-6491
www.coonrapidsmn.gov



October 11, 2012


Scott Nellis
10320 Grouse Street
Coon Rapids, MN 55433

Re: 10320 Grouse Street, Coon Rapids, Minnesota
Citation Number – 45839-20632
Offense Date – October 26, 2011

To Mr. Scott Nellis:

Please be advised that your appeal of the Determination of the Hearing Examiner in the above referenced matter has been received and is scheduled to take place before the Board of Adjustment and Appeals on Thursday, December 6, 2012, at 6:30 p.m., in the Council Chambers at Coon Rapids City Hall, 11155 Robinson Drive, Coon Rapids. You should be fully prepared to proceed with the appeal at that time.

The Notice of Determination of the Hearing Examiner dated October 2, 2012, references an offense date of October 26, 2012. This is a typographical error. The offense date is corrected above. I am enclosing Chapter 2-1100, Administrative Procedures and Penalties, of Coon Rapids City Code – Revised 1982 for your information.


Cheryl Bennett
Hearing Examiner
763-767-6422

Enclosure

11155 Robinson Drive
Coon Rapids MN 55433
Tel 763-755-2880
Fax 763-767-6491
www.coonrapidsmn.gov



October 11, 2012

Scott Nellis
10320 Grouse Street
Coon Rapids, MN 55433

Re: 10320 Grouse Street, Coon Rapids, Minnesota
Citation Number – 45839-20633
Offense Date – October 26, 2011

To Mr. Scott Nellis:

Please be advised that your appeal of the Determination of the Hearing Examiner in the above referenced matter has been received and is scheduled to take place before the Board of Adjustment and Appeals on Thursday, December 6, 2012, at 6:30 p.m., in the Council Chambers at Coon Rapids City Hall, 11155 Robinson Drive, Coon Rapids. You should be fully prepared to proceed with the appeal at that time.

The Notice of Determination of the Hearing Examiner dated October 2, 2012, references an offense date of October 26, 2012. This is a typographical error. The offense date is corrected above. I am enclosing Chapter 2-1100, Administrative Procedures and Penalties, of Coon Rapids City Code – Revised 1982 for your information.

Cheryl Bennett
Hearing Examiner
763-767-6422

Enclosure

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 2-1100

ADMINISTRATIVE PROCEDURES AND PENALTIES

2-1101 Purpose. The City Council finds that there is a need for alternative methods to enforce City Code. While criminal fines and penalties have been used historically as enforcement mechanisms, negative consequences for both the City and the public can result. The delay inherent in the criminal justice system does not ensure prompt resolution of offenses that immediately impact the livability of the community. Citizens often resent being labeled criminals for violations of administrative regulations. The higher burden of proof and the potential of incarceration are not always appropriate for many administrative violations. The criminal justice system often cannot give priority to City Code violations due to caseloads and more serious cases in the system. Accordingly, the City Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement.[Revised 4/19/11, Ordinance 2070]

2-1102 Scope. The administrative procedures and penalties in this Chapter may be used for any violation of City Code. The provisions of this Chapter may be used concurrently with or in addition to any other procedure or remedy, criminal or civil, the City may pursue under City Code, state law, or federal law. Nothing herein restricts the right of government agents to enter property immediately or to seek other remedies in emergency or other situations as authorized by City Code, state law, or federal law.

2-1103 Definitions.

- (1) Citation. An administrative citation issued pursuant to this Chapter.
- (2) Board. The City of Coon Rapids Board of Adjustment and Appeals authorized by City Code Section 3-208.
- (3) City Code. Coon Rapids Revised City Code - 1982.
- (4) City Manager. The Coon Rapids City Manager or designee.

2-1104 Administrative Offenses; Schedules of Fines and Fees.

- (1) A violation of any provision of City Code is an administrative offense subject to a citation and civil penalties pursuant to this Chapter. Each day a violation exists constitutes a separate offense.
- (2) Each count of an administrative violation is subject to a civil penalty not to exceed \$10,000, abatement, or both unless otherwise provided;
 - (a) the civil penalty for a particular count is \$300.00;
 - (b) if a violator remedies a count of a violation and demonstrates that fact prior to the compliance date, the civil penalty for that count is waived.
- (3) A second or subsequent citation issued within 180 days of any same or similar citation is subject to a civil penalty of at least twice the previously imposed penalty. If the violator remedies the violation prior to the compliance date, one half of the civil penalty will be waived.[Revised 4/19/11, Ordinance 2070]

(4) The City Council may adopt by resolution a schedule of recommended fines for offenses initiated by citation, and may designate those offenses for which a fine must be paid even if the violation is remedied. The resolution may also identify violations for which a fine only may be imposed for a first offense occurring within a specified time period, not to exceed three years. The resolution may also specify a filing fee to appeal to the Board.

(5) The City Manager is authorized to promulgate rules and forms to affect the procedures herein.

2-1105 Citation; Authorization to Issue and Contents.

(1) A person authorized to enforce provisions of City Code may issue a citation, in a form adopted by the City Manager that minimally complies with this section, upon reasonable belief that a code violation has occurred. The citation must be issued in one of the following ways:

(a) By personal service upon the owner of the property or an occupant of suitable age residing at the property where the violation occurred, or in the case of a business or corporation, the citation may be served upon a manager on the premises or to a corporate officer;

(b) By U.S. first class mail to a person identified in Subsection 2-1105(1)(a);

(c) By placing the citation on the vehicle in the case of a vehicular offense;

(d) By posting the citation in a conspicuous place on or near the main entrance where it is reasonably appears the property is occupied but the occupants are not available or willing to accept personal service, and where the property is not a licensed rental dwelling;

(e) By posting the citation in a conspicuous place on or near the main entrance and mailing by first class U.S. Mail a notice of the citation to the owner of record where it reasonably appears the property is vacant or abandoned; or

(f) By posting the citation in a conspicuous place on or near the main entrance and mailing by first class U.S. Mail, notice of the citation to the Licensee where the property is a rental dwelling licensed by the City.[Revised 4/19/11, Ordinance 2070]

(2) Contents of Citation. The citation must state the date, time, and nature of the offense, the identity of the person issuing the citation, the amount of the scheduled fine, the manner of paying the fine or appealing the citation, a date by which the fine must be paid, a compliance date, if any, and the manner and time for taking an appeal. If a compliance date is given, the citation must state the action that must be taken to achieve compliance. Any compliance date must be not less than seven nor more than 30 days following the date the citation is issued. The compliance date may be extended by the city official who issued the citation up to 30 days following the date the citation upon a determination by the city official that a reasonable plan for remedying the violation exists. The plan must be agreed to in writing by the owner of the property for an extension to be granted. The citation may include a date, range of dates, or number of days following the compliance date on which abatement of the violation will occur. If the citation further includes a conspicuous notice that abatement will occur without further warning and, in the case of property violations, with assessments of the costs therefor to the subject property, unless an appeal is taken or compliance is achieved before the compliance date, no further notice is necessary prior to the entry on the property by City officials or their agents and assignees to abate the violation and assess the costs of abatement to the property.[Revised 4/19/11, Ordinance 2070]

(3) The owner or occupant of the property must either pay the fine or, if required, come into compliance, or appeal, in a manner consistent with Subsection 2-1105(4), within the time period specified on the citation. Unless the violation is a second or subsequent violation pursuant to Subsection 2-1104(3) or is a violation for which a fine is imposed pursuant to Subsection 2-1104(4), the fine will be waived if compliance is achieved by the compliance date. Payment of a fine constitutes admission of the violation. The City Manager may extend the time for appeal only on a showing of good cause. Payment of the fine does not forgive continued violation of City Code.[Revised 4/19/11, Ordinance 2070]

(4) Contents of Appeal. The appeal must be in writing and executed by the owner of the property. The appeal must minimally state the name and mailing address of the person that caused the violation, that person's relationship to the property involved, and a brief statement why the citation is in error.[Revised 4/19/11, Ordinance 2070]

2-1106 Appeal Procedure.

(1) The City Manager, upon proper notice of appeal, shall stay any fine or abatement action until the time for appeals under this Section has run. Based on such evidence as may be received, the City Manager must affirm, rescind, or modify the citation, and provide a written notice of the determination, together with notice of the appeal procedure, if applicable, to the person identified in Subsection 2-1105(1), by personal service or U.S. Mail. The City Manager may alternatively enter into an agreement, in a form approved by the City Attorney, with the person to admit to fewer than all violations cited, to a different violation, or to delay payment of a fine or compliance; if the violator is the fee owner of the property per Anoka County property records or the agreement is executed by the fee owner, and the fee owner must agree not to appeal the violation if the fine is not paid, or compliance is not achieved, by the extended date.[Revised 5/19/09, Ordinance 2011]

(2) Within 10 days of the date of filing of service of the decision of the City Manager, any party aggrieved by the decision may appeal the determination to the Board. The appeal must comply with Subsection 2-1105(4), and must be served in person or by U.S. Mail on the City Manager.

(3) Upon receipt of a proper appeal under Subsection 2-1106(2), the City Manager must place the matter before the Board at its next available hearing date, but no earlier than 10 days after receipt of the notice, unless otherwise agreed to by the parties. Notice of the hearing must be served in person or by U.S. Mail on the person or persons identified in Subsection 2-1106(2). At the hearing, the parties may present documents and testimony, and may question witnesses. The Board must record the hearing and receive testimony and exhibits. The Board must rule on objections, and receive and give weight to evidence, including reliable hearsay evidence that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. The hearing may be continued from time to time at the discretion of the Board. The Board may issue subpoenas to compel the attendance of witnesses or documents at its own initiative or upon written request of any party involved. The Board shall tax costs of subpoena service to the requesting party. A person served with a subpoena who, without just cause, fails or refuses to obey a subpoena is guilty of a misdemeanor. The Board or any aggrieved person may additionally seek an order from the District Court to compel attendance.

(4) At any time before the hearing, or before the hearing is adjourned, the City Manager may modify the citation to change counts or include additional counts, with notice to the person bringing the appeal. If not made during the hearing, the notice must be in writing and given to the person or served by U.S. Mail.

(5) The Board must affirm or rescind the citation, as may have been modified under Subsection 2-1106(1) or Subsection 2-1106(4), and provide written notice of its determination to the parties. If a citation consists of more than one count, the Board may consider each count independently. A majority of the members present must agree in order to affirm a citation or any particular count. A failure to adopt a motion to affirm constitutes a rescission. The Board may reconsider the motion to affirm at any time before the hearing is finally adjourned. The Board's determination, if the citation or any particular count of the citation is affirmed, revokes the stay of the applicable fine and compliance dates, if any, and payment and compliance must occur within 10 days of the date of the notice of determination, unless an aggrieved party perfects a court-ordered stay with the deposit of an appropriate supersedeas bond under the Minnesota Rules of Civil Procedure.[Revised 5/19/09, Ordinance 2011]

(6) The Board's decision is final without any further right of administrative appeal. Further appeal shall be to the Minnesota Court of Appeals under the Minnesota Rules of Civil Procedure.

2-1107 Recovery of Civil Penalties.

(1) If a civil penalty is not paid within the time specified, it constitutes:

(a) A personal obligation of the violator; and

(b) A lien upon the real property upon which the violation occurred if the property or improvements on the property were the subject of the violation and the property owner was given notice of the violation.[Revised 4/19/11, Ordinance 2070]

(2) A lien may be assessed against the property and collected in the same manner as taxes.

(3) A personal obligation may be collected by any appropriate legal means.

(4) A late payment fee of 10% of the fine will be assessed for each 30-day period, or part thereof, that the fine remains unpaid after the due date.

(5) During the time that a civil penalty remains unpaid, no City approval will be granted for a license, permit, or other City approval sought by the violator or for property under the violator's ownership or control.

(6) Failure to pay a fine is grounds for suspending, revoking, denying, or not renewing a license or permit associated with the violation.

2-1108 Criminal Penalties. The following are misdemeanors:

(1) Failure, without good cause, to pay a fine or request a hearing within 30 days after issuance of an administrative citation.

(2) Failure, without good cause, to appear at a hearing that was scheduled under Section 11-2106.

(3) Failure to pay a fine imposed on or before its due date, or such other date as may be established under this Chapter.[Adopted 3/3/09, Ordinance 2002][Revised 5/19/09, Ordinance 2011]

CITY OF COON RAPIDS, MINNESOTA

CHAPTER 3-200

ADVISORY COMMISSIONS AND BOARD OF ADJUSTMENT AND APPEALS

3-201 Appointments, Vacancies and Continuation. All appointments to advisory commissions, committees, and the Board of Adjustment and Appeals shall be such as to maintain any required proportional representation and shall be approved by a majority vote of the City Council. The term of each member shall be for three years and shall terminate on December 31 of the third year or until a successor has been appointed and qualified. When vacancies occur in a position, an appointment shall be made in like manner for the remainder of the unexpired term. Each of the members serving at the time of the adoption of this Code shall serve out his or her term. All commissions, committees, and the Board of Adjustment and Appeals, established by prior ordinances, are hereby continued.[Revised 10/17/00, Ordinance 1711]

Employees of the City of Coon Rapids shall be entitled to serve on any commission, committee, or the Board of Adjustment and Appeals except, however, that the employee shall not serve on any committee for which his or her supervisor is the staff liaison.
[Revised 10/17/00, Ordinance 1711]

3-202 Organizational Structure. The chair of each commission, committee, and the Board of Adjustment and Appeals shall be designated by the City Council from among the members of each such body. The chair shall be responsible for presiding at the meetings and shall be entitled to an equal vote with other members. Each such body shall elect such other officers as may be deemed necessary and adopt its own rules of procedure, which rules shall conform to the provisions of the City Code and resolutions adopted by the City Council.[Revised 10/17/00, Ordinance 1711]

3-203 Meetings. At its annual organizational meeting, the commission, board, or committee shall designate the time and place of its regular meetings, which shall be not less than quarterly. Special meetings may be called by the chair or by any two members of the commission, board, or committee by the giving of written notice to all members of the commission, board, or committee 48 hours prior to the time of the meeting. All meetings shall be open to the public and shall be held at the City Hall or other public or semipublic facility. The City Council reserves the right to adopt, by resolution, additional rules for the operation of commissions, boards, and committees.

3-204 Annual Work Program. Each commission, board, or committee shall prepare an annual work program which shall be submitted to the City Council for approval on or before February 1 of each year. Any major deviation from the approved work program during the year shall be approved in advance by the Council.

3-205 Election Issues. No commission, board, or committee shall advocate any position on an issue in any election without prior approval of the City Council.

3-206 Compensation. Members of commissions, boards, and committees shall not be entitled to compensation for serving in such capacity except as follows:

(1) Members may be reimbursed for out of pocket expenses that directly relate to their position except for any expenses associated with members' attendance at regular or special meetings of the commission, boards or committees.

(2) Notwithstanding paragraph (1), the City may provide meals for members who are required to meet over a normal meal time.

(3) Not more frequently than once per calendar year the City may sponsor a recognition event that members and one guest each may attend at City expense.[Revised 11/6/02, Ordinance 1788]

3-207 Staff Liaison. The City Manager shall assign an employee to each commission or board to serve as liaison to the staff.

3-208 Board of Adjustment and Appeals.

(1) Composition. The Board of Adjustment and Appeals shall be composed of five members.[Revised 10/17/00, Ordinance 1711]

(2) Functions. The functions of the Board shall be as follows:

(a) To conduct hearings and deny or grant variances from the terms of the zoning and building codes and ordinances.

(b) To consider and decide appeals from decisions made by the Building Official.

(c) To consider and decide appeals from decisions made by the Zoning Administrator.

(d) For the purpose of such decision, to interpret, construe, and decide meanings of the zoning and building codes; but the Board shall not determine the validity of any such provision of the code.

(e) To perform such other duties as may be prescribed in this Code or by Minnesota Statutes.

3-209 Capital Improvement Committee.

(1) Composition. The Capital Improvement Committee shall be composed of one member from the City Council, one (1) member from the City Planning Commission, one member from the Parks and Recreation Commission, the City Manager, the Finance Director, the Director of Public Services, the Director of Planning and Development, and three at-large appointees from the general community.

(2) Functions. The functions of the Capital Improvement Committee shall be as follows:

(a) Develop and periodically review procedures for the handling of capital improvements, whether petitioned for or not.

(b) Develop and maintain a five year capital improvement program anticipating in broad scope the needs of the community, the priorities of improvements, and the ability of the community to bond for these improvements. In the preparation of the capital improvement program, the Committee will:

i. Estimate the ability of the City to bond including annual debt reduction.

ii. Take into consideration the bond rating.

iii. Compute (with ratios) the immediate maintenance cost and the increasing maintenance cost for the period covered by the capital improvement program.

(c) Upon Council request, review within the allotted time, petitions for capital improvements and the relation of these petitioned improvements to the predetermined priority scheduling, and recommend a course of action to the City Council.

3-210 Economic Development Commission.

(1) Composition. The Economic Development Commission shall be composed of seven members.

(2) Functions. The functions of the Economic Development Commission shall be as follows:

(a) Consistent with the mission defined by the Commission and approved by the City Council, provide advice and appropriate assistance to the City Council regarding objectives, policies and strategies for the economic development of the City including encouraging the retention and expansion of existing businesses and the attraction of desirable new businesses to the City.

(b) As requested by the City Council, engage in special activities regarding the economic development of the City.[Repealed 2/25/92, Ordinance 1403][Re-established 9/28/93, Ordinance 1464]

3-211 Arts Commission.

(1) Composition. The Arts Commission shall be composed of 15 members interested in the development of the arts. They need not be residents of Coon Rapids.

(2) Purpose. The Arts Commission was created by the Coon Rapids City Council in 1974 to foster the development of the arts, to advise the City Council on arts related matters, and to stimulate participation in and appreciation of the arts by all area residents.

(3) Functions. The functions of the Arts Commission shall be as follows:

(a) Promote and support local artistic events and activities.

(b) Identify cultural needs in the community.

(c) Support new cultural organizations by co-sponsoring events. Encourage them to continue their efforts independently.

(d) Develop a plan and financial budget to carry out the goals.

(e) Coordination of other programs as directed by the City Council.[Revised 6/22/93, Ordinance 1453]

3-212 Historical Commission.

(1) Composition. The Commission shall consist of nine members of whom at least one member of the Commission shall be a member of the Anoka County Historical Society, if available.

(2) Functions. The functions of the Commission shall be as follows:

(a) To act as an advisory board to the City Council in matters relating to the preservation of buildings, lands, areas, or districts which possess historical or architectural significance and which will promote the educational, cultural, and general welfare of the City of Coon Rapids.

(b) To recommend to the City Council the acquisition and maintenance of buildings, lands, areas, or districts which the Commission has determined to be of historical or architectural value.

(c) To recommend to the City Council members, places, or events which are recognized as being of historical significance to the City.

(d) To recommend to the Council means of recognizing and recording such persons, places, or events; to plan activities which shall from time to time recognize the history of the City.

(e) To plan and coordinate all City activities relating to the 1976 Bicentennial Celebration.

(f) Such other programs and activities as the Council may refer to the Commission.

3-213 Human Rights Commission.[Repealed 2/6/07, Ordinance 1941]

3-214 Human Services Commission.[Repealed 04/10/90, Ordinance 1330]

3-215 Parks and Recreation Commission.

(1) Composition. The Parks and Recreation Commission shall be composed of seven members.[Revised 10/17/95, Ordinance 1545][Revised 12/20/05, Ordinance 1913]

(2) Functions. The functions of the Parks and Recreation Commission shall be as follows:

(a) To prepare and maintain a comprehensive plan for the development of parks and recreation within the City.

(b) To conduct hearings and make recommendations to the City Council in regard to proposed changes of ordinances relating to parks and recreation in furtherance of the Comprehensive Plan and regulations therefor.[Revised 12/20/05, Ordinance 1913]

(c) To study and make recommendations to the City Council in regard to programs and practices of the Parks and Recreation Department concerning the utilization of facilities, and coordination of long-range park and recreation plans with the County, the Metropolitan Council, and the State of Minnesota, and in regard to licensing and concession operations.

(d) To study and make recommendations to the City Council in regard to the development of guidelines to ensure proper coordination of public recreational programs and park use; community school programs, programs such as those offered by other public agencies such as the Anoka-Ramsey Community College and the Anoka-Hennepin Independent School District; and with all private organizations offering park and recreational programs.

3-216 Planning Commission.

(1) Composition. The Planning Commission shall be composed of seven members.

(2) Functions. The functions of the Planning Commission shall be as follows:

(a) To prepare and maintain a comprehensive plan for the development of the City.

(b) To conduct hearings and make recommendations to the City Council in regard to proposed changes in zoning classifications and in regard to proposed special use permits.

(c) To study and make recommendations to the City Council in regard to amendments to the zoning code.

(d) To study and make recommendations to the City Council in regard to means to carry out the Comprehensive Plan and regulations therefore.

(e) To assume such other and further duties as may from time to time be directed by the City Council.

3-217 Safety Commission.

(1) Composition. The Safety Commission shall be composed of 11 members.

(2) Functions. The functions of the Safety Commission shall be as follows:

(a) To act as an advisory board to the City Council on matters related to public safety.

(b) To determine safety priorities for the Sidewalk System Plan.

(c) To provide a forum for the review of public requests and concerns regarding safety in all phases of community life and refer citizen concerns to the appropriate organization or body in an attempt to promote public safety.

(d) To serve as the appeal body for decisions made by City staff concerning traffic safety issues and forward a recommendation to the City Council.

(e) To perform other duties as the Council may refer to the Commission.[Revised 6/1/04, Ordinance 1839]

3-218 Cable Communications Commission.[Repealed 11/6/96, Ordinance 1579]

3-219 Housing and Community Development Citizens Advisory Commission.

(1) Composition. The Commission shall consist of nine members, five of whom shall be appointed by the City Council from the community at large. In addition, the Planning Commission, Capital Improvement Committee, Economic Development Commission and the Human Rights Commission shall each appoint one of its members to the Commission.[Revised 2/22/94, Ordinance 1482]

(2) Function. The function of the Commission shall be as follows:

(a) To assist the City Council in determining priorities for the Community Development Block Grant (C.D.B.G.) program.

(b) To provide a forum for the collection of public input on C.D.B.G. programs.

(c) To make recommendations to the City Council on the use of program income for eligible projects.

(d) To consider such other programs as the Council may refer to the Commission.

[Revised 02/25/92, Ordinance 1403]

3-220 Sustainable Community Commission.

(1) Composition. The Commission shall consist of nine members, three of whom shall be appointed by the City Council to represent the business community, three of whom shall be appointed by the City Council to represent residential neighborhoods, and three of whom shall be appointed by the City Council to represent the community at large.

(2) Function. The Commission shall develop and serve on subcommittees defined in this section and act in an advisory capacity to provide best practices recommendations to the City Council.

(3) Sustainable Business Subcommittee. The Commission shall establish a Sustainable Business Subcommittee. The function of the Subcommittee shall be as follows:

(a) To study and evaluate sustainable business practices that can be implemented successfully in the City of Coon Rapids.

(b) To promote sustainable business practices to the Coon Rapids business community as a whole.

(c) To recommend to the City Council the implementation of green business projects and the use of City resources to support sustainable business projects.

(d) To consider such other programs as the Council or Commission may refer to the Subcommittee.

(4) Sustainable Neighborhoods Subcommittee. The Commission shall establish a Sustainable Neighborhoods Subcommittee. The functions of the Subcommittee shall be as follows:

(a) To study and evaluate sustainable green living practices designed to reduce a resident's carbon footprint and enhance residential neighborhoods.

(b) To promote sustainable residential living practices to the community as a whole.

(c) To recommend to the City Council the implementation of City projects that enhance the sustainability of Coon Rapids neighborhoods.

(d) To consider such other programs as the Council or Commission may refer to the Subcommittee.

(5) Meetings. The Commission shall hold its meetings and function pursuant to this Chapter. The Subcommittees shall meet regularly and when necessary to fulfill the duties requested by the City Council or the Commission. All meetings shall be held in accordance with the Minnesota Open Meeting Law.

[Revised 6/16/09, Ordinance 2014]

Blaine, Minnesota, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 14 - ANIMALS >> ARTICLE V. - NONDOMESTICATED ANIMALS >>

ARTICLE V. - NONDOMESTICATED ANIMALS

Sec. 14-221. - Definitions.

Sec. 14-222. - Penalty for violation of article.

Sec. 14-223. - Purpose of article.

Sec. 14-224. - Impounding.

Sec. 14-225. - Prohibited animals.

Sec. 14-226. - Exceptions.

Sec. 14-227. - Selling.

Secs. 14-228—14-260. - Reserved.

Sec. 14-221. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nondomesticated animal means any wild animal, reptile, or fowl which is not naturally tame or gentle, but is of a wild nature or disposition, and which, because of its size, vicious nature, or other characteristics would constitute a danger to human life or property.

(Code 1980, § 5-51; Ord. No. 89-1166, 11-2-1989)

Cross reference—Definitions generally, § 1-2.

Sec. 14-222. - Penalty for violation of article.

Violation of any provision of this article shall be a misdemeanor.

(Code 1980, § 5-56; Ord. No. 89-1166, 11-2-1989; Ord. No. 98-1733, 7-23-1998)

Sec. 14-223. - Purpose of article.

The purpose of this article is to protect the public health from disease transmission, animal bites, animal attacks and other serious injury, and public nuisances arising from the keeping or escape of nondomesticated animals.

(Code 1980, § 5-50; Ord. No. 89-1166, 11-2-1989)

Sec. 14-224. - Impounding.

Any nondomesticated animal kept in violation of this article may be impounded by the city, and after being so impounded for five days or more without being reclaimed by the owner, may be sold or destroyed. Any person reclaiming such impounded animal shall pay the costs of impounding and keeping the same, and shall provide documentation of the animals relocation outside of the city.

(Code 1980, § 5-55; Ord. No. 89-1166, 11-2-1989)

Sec. 14-225. - Prohibited animals.

No person, firm, corporation or other business shall keep, maintain or harbor within the city, any of the following animals:

- (1) Any animal or species prohibited by federal or state law.
- (2) Any nondomesticated animal or species including, but not limited to, the following:

- a. Any skunk, whether captured in the wild, domestically raised, descended or not descended, vaccinated against rabies or not vaccinated against rabies.
- b. Any large cat of the family Felidae such as lions, tigers, jaguars, leopards, cougars, and ocelots, except commonly accepted domesticated house cats.
- c. Any member of the family Canidae, such as wolves, foxes, coyotes, dingoes and jackals, except domesticated dogs.
- d. Any poisonous snake or pit viper such as a rattlesnake, coral snake, water moccasin, or cobra.
- e. Any raccoon.
- f. Any other animal which is not listed explicitly in this section, but which can reasonably be defined by the terms in this section, including bears and badgers.

(Code 1980, § 5-52; Ord. No. 89-1160, 11-2-1989)

Sec. 14-226. - Exceptions.

The following nondomesticated animals shall be exempt from the provisions of this article, and may be kept within the city:

- (1) Nondomesticated animals brought into the city for entertainment, exhibition, show, promotional or educational purposes, provided that such animals are kept within an enclosure or other secure method of storage.
- (2) Nondomesticated animals for sale or display in commercial pet stores, provided that prior to a sale of any such nondomesticated animal to a person who intends to keep such animal in the city, the pet store shall be required to give the buyer a photocopy of this article.
- (3) Nondomesticated animals kept in a public zoo or other public or nonprofit institution engaged in the permanent display of nondomesticated animals.
- (4) Nonpoisonous snakes, birds kept indoors, hamsters, mice, rabbits, gerbils, white rats, guinea pigs, chinchillas or lizards, and similar small animals, provided such animals are maintained continuously in cages within the city.
- (5) Nondomesticated animals kept temporarily for a public zoo by volunteers under a designated volunteer program, provided that prior to the storage in the city such volunteer informs the city animal control officer of its presence.
- (6) All nondomesticated animals kept by veterinary clinics or other research institutions which are affiliated with a college or other institute of higher education, provided that adequate measures are taken to prevent such animals from escaping or injuring the general public.

(Code 1980, § 5-54; Ord. No. 89-1166, 11-2-1989)

Sec. 14-227. - Selling.

No person, firm, corporation or other business shall sell, offer for sale or in any way transfer ownership or possession of any animal prohibited in section 14-225 except as provided for in section 14-226(1).

(Code 1980, § 5-53; Ord. No. 89-1166, 11-2-1989)

Secs. 14-228—14-260. - Reserved.

Brooklyn Park

§ 94.03 SPECIFIC PUBLIC NUISANCES PROHIBITED.

It is declared to be a public nuisance to permit, maintain, or harbor any of the following:

- (A) Diseased animals, fish, or fowl, wild or domestic, whether confined or running at large.
- (B) Carcasses of animals, fish, or fowl, wild or domestic, not buried at least three feet under the surface of the ground or destroyed within 24 hours after death.
- (C) Garbage not stored in rodent free or fly-tight containers, or garbage stored so as to emit foul and disagreeable odors, or garbage stored so as to constitute a hazard to public health.
- (D) Accumulations of refuse, garbage, litter, abandoned property or hazardous waste as defined herein.
- (E) The dumping of any effluent, garbage, refuse, wastewater, or other noxious substance upon public or private property.
- (F) Any open well, pit, excavation, structure, barrier or other obstruction which endangers public health, safety, or welfare.
- (G) The pollution of any public or private well or cistern, any public stream, lake, canal, or body of water by effluent, garbage, rubbish, or other noxious substance.
- (H) Any noxious weeds, or any other vegetation which endangers public health, safety, or welfare, or which is contraband within the meaning of state or federal laws.
- (I) The emitting or production of dense smoke, foul odor, noise, noxious fumes, gases, soot, cinders, or sparks in quantities which unreasonably annoy, injure, or endanger the safety, health, morals, comfort, or repose of any number of members of the public.
- (J) The public exposure of persons having a contagious disease or condition which endangers public health, safety, or welfare.
- (K) Accumulation of junk, disused furniture, appliances, machinery, automobiles or parts thereof, or any matter which may become a harborage for rats, snakes, or vermin or which creates a visual blight, or which may be conducive to fire, or which endangers the comfort, repose, health, safety, or welfare of the public.
- (L) It is unlawful to cause, permit, or maintain any abandoned cesspool or septic tank without its being properly filled.
- (M) Any abandoned, damaged, defective, leaking, destroyed, unrepaired or unrestored underground liquid storage system.

('72 Code, § 1000:11) (Ord. 1989-627(A), passed 6-26-89; Am. Ord. 1993-741, passed 11-22-93)
Penalty, see § 94.99

§ 94.04 LIMITATIONS ON KEEPING OF ANIMALS.

It is hereby declared to be a public nuisance to permit, maintain, or harbor any of the following:

(A) More than three animals, as defined by § 92.01 of this code, over six months old.

(B) Chickens and other domestic fowl.

(C) Any combination of animals and/or fowl of any age kept in such numbers or under conditions which reasonably annoy, injure, or endanger the health, safety, comfort, repose, or welfare of the public or of the animals or fowl.

(D) Any wild animal, including crossbreeds with wild animals, which in their wild state pose a threat to humans or domestic animals or are capable of transmitting rabies, including, but not limited to, wolves, bear, cougar, skunk, lynx, bobcat and fox.

(E) Any animal prohibited by Chapter 92 of this code.

('72 Code, § 1000:16) (Ord. 1989-627(A), passed 6-26-89; Am. Ord. 1997-861, passed 10-27-97)
Penalty, see § 94.99

➤ **Animals may not disturb the peace.**

Excessive noise (ie. barking, howling, crowing, etc.) from your pet/animal is hard on the nerves of persons within hearing range. Respect your neighbor's right to a quiet



neighborhood. This ordinance provision is enforced twenty-four hours a day. (Ord. 92.05)

Dangerous Animals

- **Do not let your animal bite.** Any animal that bites a person must be euthanized or quarantined in the manner provided by in Ord. 92.14. The Animal Control Officer may determine that an animal that bites a human being is ferocious and of a vicious character, habit or disposition and the animal is a public nuisance. An animal declared to be "a dangerous animal or public nuisance animal" will have to be destroyed. A person keeping a "dangerous animal" or "public nuisance animal" is guilty of a penal offense. (Ord. 92.15) Be kind to your animal, do not let them bite!



Prohibited Animals

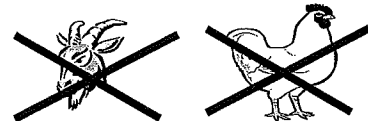
The following animals are prohibited: (Ord. 94.03, 94.04)

- Animals that are considered wild by nature and/or pose a danger to humans or other animals. These types of animals

include but are not limited to wolves, bobcats, poisonous creatures, constrictors or boa types of snakes, and other types of inherently dangerous animals.

- Diseased animals of any type (dogs, cats, fish, fowl, etc.), are prohibited and may not be transported into the City. It is unlawful for any person to knowingly bring into the City, or have in the person's possession, an animal that is afflicted with infectious or contagious diseases. All such diseased animals must be destroyed in a humane manner unless the disease is curable and the animal is under the care of, and receiving treatment from, a licensed veterinarian. (Ord. 92.11)

- Carcasses of animals, fish, or fowl, wild or domestic, are prohibited.
- Chickens, ducks, pigeons, and other domestic fowl.



- Any farm type of animal located on property not zoned as farmland. This includes horses, cows, sheep, goats, pigs, fowl, etc. Any combination of animals of any age kept in such numbers or under conditions which reasonably annoy, injure, or endanger the health, safety, comfort, repose or welfare of the public or of the animals or fowl. Kept in unclean conditions, animals can transmit disease to other animals as well as people!

iated with the
als, cages, or
refer to the *Home*
r more



Contact Resources

A variety of resources are available to help
with any questions dealing with animal
management issues:

Licensing Division

Animal licenses
763-493-8182

Code Enforcement & Public Health

Animal feces, fowl or unapproved animals
763-493-8070

Police Department

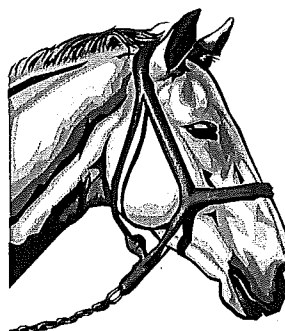
Excessive animal noise, loose animals,
Dangerous animals or animal bites
More than 3 pets on a property
911 for Officer Assistance

This brochure is intended only as a general
guide. Other codes and ordinances may
apply. You can reference city ordinances on
the city website at: www.brooklynpark.org

Form 04/11

CITY OF BROOKLYN PARK
5200 85TH AVE N
BROOKLYN PARK MN 55443
763-424-8000 FAX: 763-493-8391
763-493-8392-TDD ONLY
WWW.BROOKLYNPARK.ORG

Animal Management



Brooklyn Center

CHAPTER 19 - PUBLIC NUISANCES AND PETTY OFFENSES

NUISANCES - GENERALLY

Section 19-101. PUBLIC NUISANCE DEFINED. Whoever, by act or failure to perform a legal duty, intentionally does any of the following is guilty of maintaining a public nuisance, and is punishable as set forth herein:

1. Maintains or permits a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any number of members of the public; or
2. Interferes with, obstructs, or renders dangerous for passage, public streets, highway or right of way, or waters used by the public; or
3. Is guilty of any other act or omission declared by statutory law, the common law, or this ordinance to be a public nuisance, whether or not any sentence is specifically provided therefor; or
4. Permits real property under his or her control to be used to maintain a public nuisance or rents the same, knowing it will be so used.

Section 19-102. DEFINITIONS. The following words, when used in this ordinance, shall have the meanings ascribed to them:

1. Garbage includes all putrescible animal, vegetable or other matter that attends the preparation, consumption, display, dealing in or storage of meat, fish, fowl, birds, fruit, or vegetables, including the cans, containers or wrappers wasted along with such materials.
2. Rubbish is nonputrescible solid wastes such as wood, leaves, trimmings from shrubs, dead trees or branches thereof, shavings, sawdust, excelsior, wooden waste, printed matter, paper, paper board, paste boards, grass, rags, straw, boots, shoes, hats and all other combustibles not included under the term garbage.

Section 19-103. PUBLIC NUISANCES FURTHER DEFINED. It is hereby declared to be a public nuisance to permit, maintain, or harbor any of the following:

1. Diseased animals, fish or fowl, wild or domestic, whether confined or running at large.
2. Carcasses of animals, fish or fowl, wild or domestic, not buried or destroyed within 24 hours after death.

3. Garbage not stored in rodent free and fly-tight containers, or; garbage stored so as to emit foul and disagreeable odors, or; garbage stored so as to constitute a hazard to public health.
4. Accumulations of rubbish as defined herein.
5. The dumping of any effluent, garbage, rubbish, wastewater, or other noxious substance upon public or private property.
6. Any open well, pit, excavation, structure, barrier or other obstruction which endangers public health, safety or welfare.
7. The pollution of any public or private well or cistern, any public stream, lake, canal, or body of water by effluent, garbage, rubbish or other noxious substance.
8. Any noxious weeds, or any other vegetation which endangers public health, safety or welfare, or which is contraband within the meaning of state or federal laws.
9. The emitting or production of dense smoke, foul odor, noise, noxious fumes, gases, soot, cinders or sparks in quantities which unreasonably annoy, injure, or endanger the safety, health, morals, comfort, or repose of any number of members of the public.
10. The public exposure of persons having a contagious disease or condition which endangers public health, safety or welfare.
11. Accumulation of junk, disused furniture, appliances, machinery, automobiles and parts thereof or any matter which may become a harborage for rats, snakes or vermin, which creates a visual blight, or which may be conducive to fire, or which endangers the comfort, repose, health, safety or welfare of the public.
12. The parking and/or storage of construction equipment, farm vehicles and equipment, or a commercial vehicle with a length greater than 21 feet, or a height greater than 8 feet, or a gross vehicle weight greater than 9,000 pounds, continuously for more than two hours on any property within a residential zoning district or being lawfully used for residential purposes or on any public street adjacent to such properties. Such equipment and vehicles shall include, but are not limited to, the following: dump trucks, construction trailers, back hoes, front-end loaders, bobcats, well drilling equipment, farm trucks, combines, thrashers, tractors, tow trucks, truck-tractors, step vans, cube vans and the like.

The prohibitions of this subdivision shall not apply to the following:

- a) Any equipment or vehicle described above being used by a public utility, governmental agency, construction company, moving company or similar company which is actually being used to service a residence not belonging to or occupied by the operator of the vehicle.
 - b) Any equipment or vehicle described above which is actually making a pickup or delivery at the location where it is parked. Parking for any period of time beyond the time reasonably necessary to make such a pickup or delivery and in excess of the two hour limit shall be unlawful.
 - c) Any equipment or vehicle exceeding the above described length, height or weight limitations, but which is classified as recreation equipment as specified in Minnesota Statutes 168.011, Subdivision 25.
 - d) Any equipment or vehicle described above which is parked or stored on property zoned residential and being lawfully used as a church, school, cemetery, golf course, park, playground or publicly owned structure provided the equipment or vehicle is used by said use in the conduct of its normal affairs.
 - e) Any equipment or vehicle described above which is parked or stored on property which is zoned residential and the principal use is nonconforming within the meaning of Section 35-111 of the City Ordinances, provided such parking or storage is not increased or expanded after the effective date of this ordinance.
13. The outside parking and/or storage on vacant property of usable or unusable vehicles, trailers, watercraft, snowmobiles, recreational vehicles, all-terrain vehicles, construction vehicles and equipment, or similar vehicles, materials, supplies, equipment, ice fish houses, skateboard ramps, play houses or other nonpermanent structures except as may be permitted by the Zoning or Sign Ordinances.
14. The outside parking and/or storage on occupied residentially used property of usable or nonusable vehicles, trailers, watercraft, snowmobiles, recreational vehicles, all terrain vehicles and similar vehicles, materials, supplies, equipment, ice fish houses, skateboard ramps, or other nonpermanent structures unless they comply with the following:
- a) Vehicles, trailers and watercraft may be parked or stored outside in any yard provided, however, if they are parked or stored in the front yard area, or a yard area abutting a public street, they must be parked or stored on an authorized parking or driveway area or a paved or graveled extension of an authorized parking or driveway area and be in compliance with Section 19-

1301 through 1305 of the City Ordinances. Authorized driveways and paved or graveled extensions thereof may not exceed 50% of the front yard or a yard area abutting a public street unless approved by the City Council as part of a plan approval for an apartment complex pursuant to Section 35-230 of the City Ordinances.

- b) Materials, supplies, equipment other than construction or farm equipment, may be stored or located in any yard other than a front yard or a yard abutting a public street provided they are screened from public view by an opaque fence or wall at least six feet high or high enough to prevent these items from being seen from abutting property at ground level.
- c) All vehicles, watercraft and other articles allowed to be stored outside in an approved manner on occupied residentially used property must be owned by a person who resides on the property. (Persons who are away at school or in the military service for periods of time, but still claim the property as their legal residence shall be considered residents on the property.)
- d) The prohibitions of this section of the ordinance shall not apply to commonly accepted materials or equipment such as playground equipment, allowable accessory structures, flagpoles, air conditioner condensers, laundry drying equipment, arbors, trellises, properly stacked firewood and temporary storage of building materials for home improvement projects in process.

Section 19-104. LIMITATIONS ON KEEPING OF ANIMALS. It is hereby declared to be a public nuisance to permit, maintain or harbor any of the following:

- 1. More than two (2) dogs exceeding six months of age.
- 2. More than three (3) cats exceeding six months of age.
- 3. Any combination of more than five (5) animals exceeding six months of age.
- 4. Horses, cows, sheep, pigs, goats, swine, mules, llamas, or other hoofed animals, chickens, ducks, geese, or other agricultural animal or domestic fowl.
- 5. Live wild animals, reptile, or fowl, of types that are not naturally tame or gentle but are of a wild nature or disposition that, because of their size, vicious nature, or other characteristics would constitute a danger to human life or property. Examples of such wild animals include, but are not limited to, bears, lions, tigers, jaguars, leopards, bobcat, cougars, cheetahs, lynx, ocelots, wolves, foxes, coyotes, dingoes, jackals, bison, panthers, apes, badgers, raccoons, ferrets, skunks, puma, rattle snakes, coral snakes, water moccasins, or cobras.



BLOOMINGTON CITY CODE

DISCLAIMER

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Part II. Code

Chapter 12 PUBLIC PEACE AND SAFETY

Article IV. ANIMAL CODE

Added by Ord. No. 2010-28, 11-1-2010

Division B. Domestic Animals

Added by Ord. No. 2010-28, 11-1-2010

SEC. 12.101. LIMITATION ON NUMBER OF DOMESTIC ANIMALS.

No person shall keep in any one household unit, lot, or premise or portion thereof, more than ~~four (4) dogs, cats, ferrets, rabbits or other domestic animals, excluding fish, over six (6)~~ months old, or a combination thereof. Furthermore, no more than two (2) of the four (4) animals shall be boarded for compensation or kept for sale unless a person has a valid commercial animal establishment license from the City according to Section 14.94. For example, a single household may have one (1) dog, two (2) cats, and one (1) hamster for a total of four (4) domestic animals or pets.

(Added by Ord. No. 2010-28, 11-1-2010)

total of b - includes
domestic + non - they have
all in one category

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CITY OF BLOOMINGTON

SEC. 12.91. DEFINITIONS.

The following words and terms, when used in this Article, shall have the following meanings unless the context clearly indicates otherwise:

Animal - every non-human species of animal, including domestic, farm and wild.

Animal Control Authority - the Bloomington Police Department having oversight and control over the City's animal control officers or designee.

Animal Control Officer - an officer employed by or under contract with the City who is responsible for animal control enforcement.

Animal Requiring a License - a dog, cat or ferret that is three (3) months or older.

Aquarium - a building or institution in which aquatic animals are kept for commercial exhibition or display.

At-large - an animal is "at-large" when it is off the premises owned or occupied by its owner and is not accompanied or under restraint of the owner, or other competent person, as defined in this Section.

City Animal Shelter - any premises designated by the City for the purposes of impounding and caring for all animals held under authority of this Article.

Clean - the absence of dirt, grease, rubbish, garbage, animal and bodily excretions, and other offensive, unsightly, or extraneous matter.

Commercial Animal Establishment - any business that breeds, raises, sells, boards, distributes or exhibits animals for entertainment or educational purposes including, but not limited to, kennels, aquariums, pet shops, petting zoos, riding schools or stables, zoological parks, or performing animal exhibitions as licensed under Section 14.94.

Compendium of Animal Rabies Control ("Compendium") - the Compendium of Animal Rabies Control prepared by the National Association of State Public Health Veterinarians and provided by the Minnesota Board of Animal Health.

Coop - a type of shelter for farm poultry.

Cruelty - every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death.

Custodian - a person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having care, custody, or control of an animal, provided that the animals are kept only temporarily on the premises and are owned by others.

Dangerous Animal - an animal that has:

- (a) Without provocation, inflicted substantial bodily harm on a human being on public or private property;
- (b) Killed a domestic animal without provocation while off the owner's property; or
- (c) Been found to be potentially dangerous, and after the owner has notice that the animal is potentially dangerous, the animal aggressively bites, attacks, or endangers the safety of humans or domestic animals.

Daylight Hours - that period of the day from one-half hour before sunrise until one-half hour after sunset.

Domestic Animal - any of the various non-venomous animals domesticated so as to live and breed in a tame condition and commonly accepted as household pets. Domestic animals do not include any animals considered to be farm poultry, farm animals or wild animals as defined in this Article. Domestic animals may also be known as pets. Domestic animals are limited to:

(a) **Dogs** - any animal in whole (excluding hi-breds with wolves, coyotes, or jackals) of the species *Canis familiaris*, which are required to be properly vaccinated against rabies pursuant to law;

(b) **Cats** - any animal in whole (excluding hi-breds with ocelots or margays) of the species *Felis catus*, which are required to be properly vaccinated against rabies pursuant to law;

(c) **Ferrets** - any animal of the species *Mustela putorius furo*, which are required by this City Code to be spayed or neutered, and are required to be properly vaccinated against rabies pursuant to this City Code;

(d) **Birds** - any of the class of Aves (birds) that are caged and otherwise kept inside the residence, excluding all farm poultry;

(e) **Rabbits** - any animal of the order Lagomorpha that are caged and kept inside or in an outdoor hutch near the dwelling or garage;

(f) **Rodents** - any of the order Rodentia such as mice, rats, gerbils, hamsters, chinchillas and guinea pigs that are caged and otherwise kept inside the residence;

(g) **Reptiles** - any of the class Reptilia such as snakes less than six (6) feet in length, lizards, and turtles that are caged and otherwise kept inside the residence; (OVER SIX FEET CONSIDERED EXOTIC AND WOULD NOT BE ALLOWED IN SINGLE FAMILY DWELLING CONSIDERED COMMERCIAL PER LYNN MOORE CITY OF BLOOMINGTON) 3/23/2012

(h)**Amphibians** – any of the class of Amphibia such as salamanders, frogs, and toads that are caged and otherwise kept inside the residence;

(i)**Hedgehogs** – any of the order of Erinaceomorpha such as hedgehogs and moon rats that are caged and otherwise kept inside the residence;

(j)**Sugar gliders** – any animal of the species *Petaurus breviceps* that are caged and otherwise kept inside the residence; and

(k)**Fish** – all varieties commonly raised as pets in tanks inside or in decorative outdoor ponds at homes or commercial businesses unless specifically prohibited by state or federal law.

Enclosure – a fenced area or run where animals are confined outdoors.

Enclosure for a Dangerous Animal – securely confined space indoors or a securely enclosed and locked pen or structure suitable to prevent the animal from escaping and providing protection from the elements for the animal. An enclosure for a dangerous animal does not include a porch, patio, or any parts of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only obstacles that prevent the animal from escaping.

Farm Animal – any of the various species of animals domesticated as to live and breed in a tame condition and kept for agricultural purposes such as, but not limited to, horses, cattle, goats, sheep, llamas, potbellied pigs, pigs, and bees. Farm animals do not include any animal considered to be farm poultry, domestic or wild animals as defined in this Article.

Farm Poultry - any of the various species of domesticated poultry as to live and breed in a tame condition and kept for agricultural purposes such as, but not limited to, chickens, ducks, geese, turkeys, pigeons, swans, and doves. Farm poultry does not include any animal considered to be domestic animals, farm animals or wild animals as defined in this Article.

Good Repair - free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.

Great Bodily Harm - bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

Health Authority – the City of Bloomington Environmental Health Division or designee.

Hearing Officer - an impartial person retained by the City to conduct the hearings prescribed in this Article.

Issuing Authority - the City of Bloomington License Section or designee.

Own - to keep, harbor, or have control, charge, or custody of an animal. This term shall not apply to animals owned by others which are temporarily maintained on the premises of a veterinarian or other pet services facility operator.

Owner - any person owning, possessing, keeping, harboring or having an interest in or having care, custody or control of an animal, excluding veterinarians or pet services facility operators temporarily maintaining an animal on their premises where the animal is owned by another.

Other Animal Kept as a Pet - an animal other than a dog, cat or ferret for which a rabies vaccine is licensed for the species by the United States Department of Agriculture. An animal that is deemed a prohibited wild animal pursuant to Division E. of this Chapter shall not be kept as a pet even though a rabies vaccine is licensed for the animal and such an animal shall not be included in the definition of "Other Animal Kept as a Pet".

Performing Animal Exhibition - any commercial spectacle, display, act, or event in which performing animals are used.

Person - one or more natural persons, a partnership, including a limited partnership, a corporation, including a foreign, domestic or nonprofit corporation, a trust, or any other business organization.

Pet - see domestic animal.

Pet services facility - a business establishment that provides any of the following services or retail activity either individually or in combination, for pets and domestic animals: sales, animal sales, veterinary care, animal hospital, short-term daily care, training classes, boarding and grooming.

Pet Shop - any person, whether operated separately or in connection with another business enterprise, that buys, exhibits, or sells any species of domestic animal.

Picket - to secure an animal by means of a chain or metallic cable to a fixed object, thereby confining the animal to a specified area.

Potentially Dangerous Animal- any animal that:

(1)when unprovoked, inflicts bites on a human or domestic animal on public or private property;

(2)when unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or

(3)has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

Provocation - an act that an adult could reasonably expect may cause an animal to attack or bite.

Rabid Animal - an animal showing signs associated with rabies that are observed and reported by a veterinarian, or an animal diagnosed as positive for rabies by a recognized laboratory, or both. Any skunk, wolf, wolf hybrid, civet cat, raccoon, opossum, bat, or fox that bites a dog or cat shall be deemed to be a rabid animal for the purposes of this Article.

Rabies Control Authority - the Bloomington Police Department having oversight and control over the City's animal control officers or designee.

Rabies Suspect - any animal which is considered as a potentially rabid animal under guidelines of the U.S. Centers for Disease Control and Prevention and the Minnesota Department of Health, which has bitten any person and caused an abrasion of the skin of such person or has otherwise exposed that person to its saliva through an open wound or mucous membrane.

Regular Business Day - a day during which the City animal shelter is open to the public for not less than four (4) consecutive hours between the hours of 8:00 a.m. and 7:00 p.m.

Riding School or Stable - any place that has available for hire, boarding, and/or riding instruction, any horse, pony, donkey, mule, llama, or burro; or any place that regularly buys, sells, or trains the above animals, including a trotting track or rodeo.

Shelter - a structure, stable, barn or coop designed to provide shelter from weather and safety for animals.

Substantial Bodily Harm - bodily injury which involves a temporary or permanent but substantial disfigurement, or which causes temporary or permanent but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

Trap - any mechanical device, snare, artificial light, net, bird line, ferret, hawk, vehicle, or any contrivance whatever.

Trapping - the setting or laying or otherwise using of a trap anywhere in the City to catch, snare or otherwise restrain free movement of mammals, fish or birds.

Under Restraint - an animal is under restraint if:

(1) the animal is within a secure vehicle;

(2) the animal is within a secure fence or building within the owner's property limits;

(3) the animal is picketed in accordance with this Article of the City Code;

(4) the animal is controlled by a leash, provided that when persons or other animals are within twenty (20) feet of the animal the leash is shortened to six (6) feet; or

(5)the animal:

- (A)is within the owner's property limits, or is involved in a scheduled animal show or obedience demonstration or trial, is legally involved in hunting or retrieving game animals, or is within the boundaries of a City park or other City-owned property designated and posted by the Manager of Parks and Recreation as an off-leash site specifically designed for that type of animal; and
- (B)is controlled by a competent person and is immediately obedient to that person's command.

Vaccination Against Rabies - the inoculation of a dog, cat or other animal kept as a pet with a rabies vaccine licensed for that species by the United States Department of Agriculture and administered in accordance with recommendations listed in the most current Compendium of Animal Rabies Control. The vaccination must be performed by or under the supervision of a veterinarian.

Veterinarian - a veterinarian licensed in the State of Minnesota or another state of the United States.

Veterinary Hospital - any establishment maintained or operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

Wild Animal - every non-human species of the animal kingdom, including those born or raised in captivity, except the following:

- (1)Animals defined in this section as domestic animals or pets;
- (2)Animals defined in this section as farm animals or farm poultry;
- (3)Song birds or other wild species of birds other than turkeys, ducks and geese, that may be fed from feeders five (5) feet off of the ground for application of Sections 12.122 only.

Zoological Park - any permanent facility operated by a person, partnership, corporation or government agency, other than a pet shop, commercial animal establishment or pet services facility, displaying or exhibiting one (1) or more species of animals.

(Added by Ord. No. 2010-28, 11-1-2010)

12. "Public nuisance animal" means an animal that:

- a. is maintained in a manner that violates section 925.080(2);
- b. by virtue of number or types of animals maintained, is offensive or dangerous to the public health, safety or welfare; or
- c. has been the subject of a violation of this chapter more than two times in a 24-month period.

13. "Under restraint" regarding a dog means being: (a) at heel beside a person having custody of it and obedient to that person's command; (b) within a private motor vehicle of a person, owning, harboring or keeping the animal; or (c) controlled by a leash not exceeding six feet in length.

14. "Veterinary hospital" means a place for the treatment, hospitalization, surgery, care and boarding of animals and birds, under the direction of one or more licensed veterinarians.

15. "Wild animal" means any of the following:

- a. front-fanged venomous snakes, including the *viperidae* and *elapidae* families of snakes, such as rattlesnakes and cobras;
- b. snakes over 8 feet in length;
- c. reptiles that have the physical ability as an adult to cause substantial bodily injury as defined in Minn. Stat. § 609.02, subd. 7a, to humans and/or domestic animals, such as python snakes and crocodilians;
- d. animals that can transmit rabies and cannot be vaccinated against rabies, except domestic animals such as cows;
- e. mammals that as a breed are considered wild by nature because of breeding, history, character, habit, or disposition; and
- f. mammals that have at least 25 percent of their heritage from mammals specified in subparagraph e, above.

"Wild animal" specifically includes such animals as a wolf, fox, skunk, raccoon, mink, bobcat, deer, and monkey, but does not include a fish, bird, ferret, hamster or gerbil.

(Amended by Ordinance #2008-29, adopted October 13, 2008; amended by Ord. #2006-09, adopted May 8, 2006; amended by Ord. #2002-13, adopted May 20, 2002)

925.010. Enforcement.

The provisions of this chapter will be enforced by the chief of police, the health authority, and designees, with the assistance of other personnel when appropriate.

925.015. Right of Entry.

Authorized city personnel have the right to enter upon a premises at reasonable times for the purpose of discharging their duties imposed by this chapter when there is reasonable belief that a violation of this chapter has been committed.